

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Exclusive Service Contracts for)
Provision of Video Services in)
Multiple Dwelling Units and Other)
Real Estate Developments)

MB Docket No. 07-51

**COMMENTS OF
THE NATIONAL MULTI HOUSING COUNCIL, THE NATIONAL APARTMENT
ASSOCIATION, THE INSTITUTE OF REAL ESTATE MANAGEMENT, THE
NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS, AND THE
REAL ESTATE ROUNDTABLE**

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Summary

The National Multi Housing Council, the National Apartment Association, the Institute of Real Estate Management, the National Association of Real Estate Investment Trusts, and the Real Estate Roundtable strongly oppose Commission regulation of any contracts related to the provision of video services in multiple dwelling unit (“MDU”) buildings and other real estate developments. The FCC reached the wrong factual, legal, and policy conclusions in its November 13, 2007, Order in this docket (the “Order”). The Commission should not compound those errors by adopting additional unfounded regulations in response to the Further Notice of Proposed Rulemaking (the “FNPRM”). In particular, exclusive marketing agreements and bulk service agreements are valuable tools that benefit residents, apartment owners, and service providers. Regulation of such agreements is not warranted and would exceed the Commission’s authority. Nor should the Commission extend its ban on “exclusivity clauses” to include private cable operators and other providers not subject to Section 628 of the Communications Act.

There is no policy justification for Commission regulation of exclusive marketing agreements. Not only do exclusive marketing agreements permit competitive entry, but there is evidence that competitive providers are willing and able to compete in buildings that are already subject to existing exclusive marketing agreements. In fact, it is becoming common, especially in new construction, for different providers to have exclusive marketing rights for different services.

Furthermore, Commission regulation of marketing agreements would actually limit the deployment of competitive infrastructure. Property owners rely on exclusive marketing agreements to defray the costs of communications infrastructure in their buildings. For example, the cost of communications wiring in new construction typically ranges from \$565 to \$1075 per

unit. Property owners can expect to recover about half of that cost through marketing agreements, but even the remaining net cost of \$300 to \$610 per unit is substantial. If the Commission were to ban exclusive marketing agreements, owners would be forced to choose between finding alternative mechanisms for sharing the cost of infrastructure with providers, and bearing the full cost of communications infrastructure themselves. Such alternative mechanisms — such as exclusive easements and exclusive rights to use wiring — restrict competitive delivery of service much more than exclusive marketing rights do. On the other hand, once a property owner has granted one provider the right to make available advanced triple-play services, the prospect of bearing the full cost of infrastructure to support two providers will tend to reduce an owner's incentive to grant access to a competitor.

In any case, the Commission has no authority to regulate marketing agreements. The Commission's first Order was unlawful, because Section 628 of the Communications Act does not apply to contracts between property owners and video service providers. Furthermore, even if Section 628 did give the Commission the authority to regulate in this area, marketing agreements do not violate Section 628, under the plain language of that statute. Marketing agreements are not "unfair" or "deceptive." Nor do they "hinder significantly" or "prevent" access by competitors.

Commission regulation of bulk service agreements would also be unjustified and without legal authority. Bulk agreements offer residents enormous cost savings because they provide for discounts of as much as 40-60% below the standard residential rate for cable service. Bulk agreements allow property owners to provide their residents specific benefits tailored to the needs of the community, such as particular programming packages and community channels.

The Commission would be doing great harm to consumers, especially elderly and low income residents, if it sought to limit bulk discounts.

More fundamentally, the Commission has no power to regulate bulk agreements. First, Congress expressly endorsed the use of bulk agreements in Section 623(d), having amended the Cable Act in 1996 for the stated purpose of exempting bulk agreements from the Act's uniform rate requirement. Second, the Commission no longer has any power over cable service rates in any geographic area that is at issue in this proceeding. Section 623(a)(2) forbids any regulation of cable rates in any area in which there is effective competition, and Section 623(l)(1)(D) provides that effective competition exists in any area in which the a common carrier is providing video service.

Finally, the Commission should not extend the recent ban on building exclusivity clauses. Not only did the Commission have no authority to adopt the prohibition, but private cable operators and other small providers need the certainty provided by exclusive agreements to justify new capital investments. Without exclusive contracts, the large cable companies and local exchange carriers will dominate the market, and apartment residents and owners will have fewer competitive options.

Table of Contents

	<u>Page</u>
Summary	i
Introduction.....	1
I. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO REGULATE ANY ACTIVITY ON THE PART OF PROPERTY OWNERS.....	2
II. THERE IS NO POLICY JUSTIFICATION FOR COMMISSION REGULATION OF MARKETING AGREEMENTS.....	5
A. Exclusive Marketing Agreements Do Not Deter Competitive Entry.	6
B. Regulation of Marketing Agreements Will Reduce the Prospects of Competitive Entry in the Apartment Market.	8
1. Exclusive Agreements Primarily Serve as a Mechanism for Allocating Communications Infrastructure Costs.....	8
2. The Order May Harm Competitive Entry, and Expanding Its Scope Will Only Make Matters Worse.	12
C. Regulation of Marketing Agreements Would Ultimately Be Ineffective.	19
III. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO REGULATE EXCLUSIVE MARKETING AGREEMENTS.	20
IV. THE COMMISSION CANNOT AND SHOULD NOT REGULATE BULK AGREEMENTS.....	22
A. Bulk Agreements Benefit Subscribers.....	22
B. The Cable Act Gives the FCC No Authority To Ban Bulk Agreements.....	25
V. THE COMMISSION SHOULD NOT EXTEND THE RULE TO INCLUDE PRIVATE CABLE OPERATORS.	28
CONCLUSION.....	30

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Introduction

The National Multi Housing Council, the National Apartment Association, the Institute of Real Estate Management, the National Association of Real Estate Investment Trusts, and the Real Estate Roundtable (the “Real Estate Associations” or the “Associations”)¹ respectfully submit these Comments in response to the Commission’s Further Notice of Proposed Rulemaking (the “FNPRM”).² The FNPRM solicits comment on whether the Commission should extend its new rules banning “exclusivity clauses” in agreements between property owners and video providers to cover private cable operators and other entities not subject to Section 628, and on whether the Commission should also regulate exclusive marketing

¹ A description of each of the commenters is attached hereto as Exhibit A.

agreements and bulk service agreements.³ The Associations oppose any further regulation of agreements between property owners and video service providers. The Commission reached the wrong factual, legal, and policy conclusions in its November 13, 2007, Order (the “Order”),⁴ and the Commission should not compound those errors by adopting additional unfounded regulations in response to the FNPRM. Further action by the Commission will only distort the market by interfering with lawful and valuable mechanisms for allocating infrastructure development costs, and in the process hinder the deployment of competitive networks and services.

I. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO REGULATE ANY ACTIVITY ON THE PART OF PROPERTY OWNERS.

The Commission’s Order is deeply flawed and the RAA anticipates that it will be overturned in the appeals now pending before the Court of Appeals for the D.C. Circuit.⁵ For that reason, any further regulation purportedly based on the rationales or legal theories set forth in the Order is similarly flawed.

The fundamental legal problem that the Commission faces is that it lacks the authority to regulate the real estate industry. Specifically, the Commission has no power to regulate contracts entered into by property owners, regardless of whether those contracts grant rights related to the use of real estate or obligate property owners to provide marketing services to cable operators.

² *In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, ¶¶ 61-66 (“FNPRM”), 22 FCC Rcd 20235, 20264 (2007).

³ FNPRM at ¶¶ 61, 63.

⁴ *In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, (“Order”), 22 FCC Rcd 20235 (2007).

⁵ *National Multi Housing Council, et al. v. FCC*, No. 08-1017 (D.C. Cir., filed Jan. 17, 2008), consolidated with *National Cable & Telecommunications Association v. FCC*, No. 08-1016 (D.C. Cir., filed Jan. 17, 2008).

Indeed, the Commission has implicitly acknowledged that it has no power to regulate real estate transactions. The Commission's attempt to circumvent this limitation by distorting the meaning of Section 628 of the Communications Act, 47 U.S.C. § 548 is untenable.

In asserting that the Commission's Order regulates only certain practices of the cable industry, the Commission has created what can only be called an unlawful fiction. In fact, the Commission's reliance on Section 628 and its admission that it has no power to regulate the activities of building owners⁶ prove the weakness of the Commission's position. The Commission has no power over any term of any contract between a cable operator and a property owner,⁷ much less a contract that grants the provider the right to use and occupy real property. Section 628 is not a general consumer protection statute, nor does it permit the Commission to regulate just any practice of the cable industry that might bear on the ability of competitors to deliver programming to subscribers. The Commission's overly broad reading of the statute – its disclaimer to the contrary⁸ – would render much of the Cable Act superfluous and effectively subject the cable industry to common carrier-type regulation. In essence, the Commission has asserted the power to review and strike out specific terms of agreements entered into by cable operators, as if they were tariffs subject to Title II. Congress, however, established a very

⁶ Order at ¶ 37.

⁷ The one possible exception to this statement concerns contracts pursuant to which the property owner itself obtains cable service from the operator, but even then the Cable Act gives the agency only limited authority over the provider's rates. The Commission has no authority over quality of service terms, customer standards, or any other term of such a contract. As discussed further below, the Commission has no power over the rates charged for service under such an agreement, except for basic service, and even then its rules are of no effect if the local franchising authority is not regulating basic service rates. And of course, basic rates are not regulated if a local exchange carrier is providing video service in the franchise area.

⁸ Order at ¶ 43, n.132.

different regulatory scheme for the cable industry; Section 628(b) is not analogous to Section 201(b), or any other provision of Title II.

The Order's flawed interpretation of Section 628 is further undermined by other provisions of the Cable Act, principally Section 621(a)(1). Section 628 was enacted by the 1992 Cable Act, which also amended Section 621(a)(1) to ban local franchising authorities from granting exclusive franchises. Exclusive franchises are directly analogous to building access agreements, as Consumers Union pointed out in its *ex parte* letter to the Commission,⁹ and Congress stated that prohibition clearly and explicitly, in no uncertain terms, saying "a franchising authority may not grant an exclusive franchise" There is no reason to believe that Congress would not have adopted exactly such language with respect to building access agreements, had it been interested in banning them. The Order nonetheless argues that Congress could have expressly permitted exclusive contracts or exclusivity clauses if it had wanted to,¹⁰ saying that Congress could have drafted narrowly tailored language."¹¹ But this only proves our point: When Congress banned exclusive franchises, it made its intent perfectly clear, yet Congress said not a word about exclusive access to buildings. The Commission's reading of Section 628, both standing on its own and in the context of the Cable Act as a whole, is a distortion of the law.

Because the Commission's Order has no legal foundation, it cannot be relied on as the basis for any further regulation. Furthermore, as discussed below, the rationale of the Order does

⁹ Letter from Chris Murray, Senior Counsel, Consumers Union to Chairman Kevin J. Martin, in MB Docket No. 07-51 (filed Oct. 23, 2007).

¹⁰ Order at ¶ 44, n. 136.

¹¹ *Id.*

not support regulation of either marketing agreements or bulk service agreements.

Consequently, this proceeding should be terminated without further action.

II. THERE IS NO POLICY JUSTIFICATION FOR COMMISSION REGULATION OF MARKETING AGREEMENTS.

Although the details can vary, the basic bargain in marketing agreements between property owners and video providers is for the building owner to agree to serve as a marketing representative of the video services provider. That is, a building manager markets the video provider's product offerings to prospective residents on an exclusive basis in exchange for certain benefits, which can include cash compensation as well as other specifically-negotiated commitments.

These arrangements are not unlike other forms of marketing by communications providers. Their purpose is to encourage potential customers to buy the company's product. Typical arrangements may impose the following types of obligations on property owners:¹²

- Including informational literature about the provider's service in a prospective resident package.
- Telling prospective residents that the provider's service is available in the building.
- Placing a link to the provider's website on the building owner's website.
- Allowing the provider to conduct on-site marketing events and other promotions.

The exclusive marketing agreement only prevents the building owner from marketing the services of another provider. Thus, if another provider has access to the property, it too can

¹² Declaration of Chris Acker in Support of Comments of the Real Access Alliance, attached as Exhibit C to the Comments of the Real Access Alliance in MB Docket No. 07-51 (filed July 2, 2007) ("Acker Decl.") at ¶¶ 11, 12, 16; Declaration of Stephen J. Sadler in Support of Comments of the Real Access Alliance, attached as Exhibit D to the Comments of the Real Access Alliance in MB Docket No. 07-51 (filed July 2, 2007) ("Sadler Decl."), at ¶¶ 4, 14-22.

serve residents. The property owner has no legal obligation under the exclusive marketing agreement to bar that activity.

Exclusive marketing agreements typically compensate the owner for its marketing services, and also reimburse the property owner for costs associated with the installation or upgrade of wiring in the building. In other words, marketing agreements serve multiple purposes: They offer extremely important financial benefits to property owners, which facilitate the installation and enhancement of infrastructure, independent of any benefit afforded to cable providers.

A. Exclusive Marketing Agreements Do Not Deter Competitive Entry.

Exclusive marketing agreements are not a significant barrier to the deployment of competitive video services by the telephone industry. Not only do they, by their terms, permit additional providers to serve a property, but in practice their presence does not significantly deter competitors from entering into agreements to serve particular properties. For example, United Dominion Realty (“UDR”), the ninth largest apartment owner in the country, reports that it has executed many license agreements with a large incumbent local exchange carrier (“ILEC”) to provide fiber-based video services in UDR’s buildings in many markets; UDR also anticipates entering into many more license agreements in 2008.¹³ At most of those properties, UDR is subject to marketing agreements that grant the incumbent video provider exclusive marketing rights.¹⁴ UDR has informed the ILEC of these restrictions, but the ILEC has never indicated any reluctance to deploy video services because of the existence of an exclusive marketing

¹³ Declaration of Terry Fulbright in Support of the Further Comments of the Real Estate Associations (“Fulbright Decl.”), attached as Ex. B, at ¶ 9.

¹⁴ *Id.* at ¶ 10.

agreement with an incumbent video provider.¹⁵ Indeed, it is becoming common for ILECs to obtain exclusive marketing agreements for voice service on the same properties at which other providers have exclusive marketing rights for different services.¹⁶

The primary deterrent to competitive entry by the ILECs – principally Verizon in the current market – in many multiple dwelling unit (“MDU”)¹⁷ properties is the economic equation of low revenue prospects versus high costs for installing or upgrading infrastructure. In many cases, Verizon will not agree to deliver its advanced services if the existing infrastructure does not support such services. This is because of the cost of installing new infrastructure. Even in cases in which such an upgrade may seem financially feasible, Verizon may still choose not to serve the property in the presence of a competing cable operator. This is again because potential revenues may not exceed the associated costs. When Verizon or another competitor does choose to serve properties that are already served by an incumbent cable operator, those projects are generally larger buildings with affluent residents. But it is well established in the multifamily communications industry that the most critical factor influencing decisions to serve an MDU property is the cost of installing or upgrading existing infrastructure.

For example, in existing buildings in which an incumbent cable operator does not have an exclusive service agreement, property owners report that Verizon typically has not agreed to serve a building if the existing wiring will not support its technology. The basis for this decision by Verizon is not the presence of an existing provider, but the company’s internal calculation of the cost of upgrading the existing video and data distribution facilities, and the likelihood of

¹⁵ *Id.*

¹⁶ *Id.* at ¶ 6.

¹⁷ We use the term “MDU” here in its traditional sense of apartment buildings and other multiple unit residential arrangements, rather than the mere expansive definition adopted in the Order.

achieving an acceptable return on investment. A related consideration in this decision-making process is the practical complexity of upgrading wiring or overbuilding with new wiring and the time needed to perform the work, which are key factors in calculating the total cost.

Verizon's wiring specifications for new MDU construction projects illustrate the importance of cost allocation to the company. For such projects, Verizon has developed extensive engineering requirements developers are required to meet. Under these specifications, the developer is required to bear all of the costs for wiring inside individual units, as well as a substantial portion of costs elsewhere in the building.¹⁸ These costs are substantially higher than the standard low voltage wiring specifications that are otherwise used by developers across the country.

Regardless of the individual calculation a provider may make regarding a specific property, the UDR example illustrates that the presence of exclusive marketing agreements is not, in and of itself, a deterrent to competitive entry in the multifamily marketplace today.

B. Regulation of Marketing Agreements Will Reduce the Prospects of Competitive Entry in the Apartment Market.

1. Exclusive Agreements Primarily Serve as a Mechanism for Allocating Communications Infrastructure Costs.

The Commission must understand the implications of this critical fact: in most states, building owners have complete discretion over which cable providers to admit to their properties; indeed, they may choose to allow only one provider to serve a building. Owners

¹⁸ See Verizon Fiber-to-the-Premises Multiple Dwelling Unit Multi-Customer ONT Architecture Fiber Distribution Specifications and Inside Wiring Specifications, attached as Exhibit C, at 4-5, 9; Verizon Fiber-to-the-Premises Single Family Multi-Customer ONT Architecture Fiber Distribution Specifications and Inside Wiring Specifications, attached as Exhibit D, at 4-7 (note that despite the name, the single-family architecture is commonly used in multifamily construction).

make those choices based on which provider or providers can best meet the needs of the residents of a particular property. In selecting a provider, or deciding whether to admit multiple providers, owners must also take into account the associated costs. Once an owner has obtained the services of a competent provider for each class of service – voice, video and Internet – whether from one provider or more than one, the owner’s fundamental need to provide each service to residents of a property has been met. The decision to allow additional providers to serve a property, such as a second triple-play provider, will depend not just on the degree to which residents of the property demand a choice of providers, but on the owner’s financial ability to make that choice available.

As the Real Access Alliance stated in its comments responding to the NPRM,¹⁹ exclusive agreements of various kinds provide a means for allocating infrastructure costs between building owners and providers. Although the Order ignored that issue and the information submitted by the real estate industry, this is, in fact, a critical point. In the early years of the cable industry, operators made explicit bargains with property owners: The owner could independently pay for installation of the cable system; give the provider an exclusive agreement, in which case the provider would build the network; or choose to go without service.²⁰ Over time, it became common for property owners to install wiring themselves, especially in new construction, and negotiate for reimbursement in return for exclusivity. If an owner chose to pay some or all of the costs of cable infrastructure in a building, it could recover most, if not all, of that cost through payments received from the cable operator. In today’s market, however, providers agree to pay

¹⁹ Comments of the Real Access Alliance, MB Docket No. 07-51 (filed July 2, 2007) (“RAA Comments”), at 7-16.

²⁰ See *Satellite Television & Assoc. Resources, Inc. v. Continental Cablevision of Virginia, Inc.*, 714 F.2d 351, 354 (4th Cir. 1983).

far less compensation than they once did. Even with multiple providers in a building each paying some compensation, owners can expect to bear a substantial portion of the cost of new infrastructure. Total reimbursements today typically return about 45 to 55 % of an owner's total costs in new construction projects.²¹

The Commission's policy analysis to date has been fundamentally flawed because the Commission has never sought to understand the economics of network construction in the MDU market. The Commission assumes that if multiple providers can obtain access to residents inside buildings, prices will come down. The Commission also seems to assume that a sufficient number of providers will, in fact, seek access to a sufficient number of buildings to fundamentally alter the existing marketplace. And finally, the Commission seems to have assumed that there is no difference between the MDU market and other markets. While the Real Estate Associations wholeheartedly agree that competition is good, the Commission's assumptions about the scope and likelihood of competitive entry and its effect on prices are not necessarily justified. For example, shortly after the Order was released, Verizon announced a substantial increase in its rates for video services – presumably just as the market was becoming more competitive, not less.²²

This is a complex subject, deserving of a far more detailed analysis than the Commission has undertaken. For present purposes, however, we will concentrate on the last point. There is a fundamental difference between the market inside MDUs and the market outside: in the outside market, service providers bear the full cost of infrastructure development. Providers and only

²¹ Declaration of Henry Pye in Support of the Comments of the Real Estate Associations, attached as Exhibit E ("Pye Decl."), at ¶¶ 8-9, and Ex. 1 thereto.

²² Todd Spangler, "Verizon to Boost FiOS TV Rates for New Subscribers: Monthly Price of Primary Video Package to Increase 12%, to \$47.99 After Jan. 20," *Multichannel News*, November 20, 2007, attached as Exhibit F.

providers pay for installation of new headend facilities, distribution cabling, trenching, drop installation and all the other costs of construction. They recover their costs in subscriber service and installation charges. There may be some subsidies built into the system – if the costs of right-of-way acquisition and management are not fully recovered in franchise fees, permit fees and the like, or if pole attachment fees are too low. But in principle only the provider is paying for the cost of constructing its network.

The MDU market is fundamentally different, because apartment owners typically bear a substantial portion of installation costs.²³ In today's market, property owners effectively subsidize the cost of providers' networks. Cable operators make individual decisions about the costs and potential return on investment of building networks inside every property they serve. Similarly, building owners make decisions about which provider to admit and on what terms. There is interplay between the broader market and the MDU market: The costs of operating the entire system factor into decisions about serving an individual building, and assumptions about the number of MDU residents and the average costs of extending service to those residents presumably factor into decisions about the overall market. But the MDU market needs to be analyzed and understood on its own terms.

In summary, there are two distinct markets at work: One for construction and financing of the overall network, with which the Commission may be generally familiar, and one for the construction and financing of the networks needed to serve each particular building. In the Order, the Commission seems to have based its assumptions about competition and incentives in the MDU market on the broader market, without examining or appreciating even the most basic differences between the two markets.

²³ Pye Decl. at ¶¶ 8-9.

2. The Order May Harm Competitive Entry, and Expanding Its Scope Will Only Make Matters Worse.

In the Order, the Commission proceeded to ban exclusive building access agreements without considering how the market and the attendant cost allocation mechanism work, or the implications of interfering with that mechanism. Owners will continue to seek reimbursement of infrastructure costs, and providers will continue to assume a share of those costs in return for adequate consideration. Even if the Commission had been legally empowered to adopt the Order, it was not entitled to ignore the facts about how the MDU market works. That failure to consider relevant factors violated the Administrative Procedure Act,²⁴ and led to a flawed decision. Having erred once by not considering these factors in the Order, the Commission should not now err again by regulating exclusive marketing agreements.

By attempting to ban exclusive access agreements, the Commission has left property owners with a difficult choice – either find other means of recovering infrastructure costs from cable operators, or bear these costs entirely on their own. Both paths can be expected to lead to a reduction in competitive entry for the reasons discussed below.

- ***The Order Creates Pressure for Parties to Reach the Same Allocation Result by Other Means, Which Are More Likely To Deter Competitive Entry.***

Property owners will continue to seek contributions to their communications infrastructure costs from cable operators, and cable operators will continue to seek exclusive rights in return. The limits of the Commission’s authority over property owners, however, restrict the Commission’s ability to eliminate all forms of exclusive access. For example, the Order applies only to certain “contracts.” Nothing in the Order has any effect on any grant of an exclusive easement, because easement rights are not “contracts.” Nor does the Order apply to

²⁴ *Motor Vehicle Mfrs. v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

contracts granting the right to use wiring inside a building. Thus, the Order will tend to create pressure from providers for property owners to grant exclusive easements and exclusive rights to use wiring. Neither is desirable from either the Commission's perspective or the real estate industry's, and currently exclusive marketing agreements remain an option for accomplishing the cost allocation function previously performed by exclusivity clauses. Eliminating exclusive marketing – even if it were within the Commission's power – would thus have extremely counter-productive effects.

We must note that if the Commission's view of the level of sophistication of property owners is correct, the anti-competitive effects of the Order will be particularly strong: The Order suggests that property owners sign access agreements without reading the “fine print.”²⁵ While this characterization is entirely unfounded, banning exclusivity clauses will increase the ability of cable providers to demand more onerous forms of access in return for bearing the cost of installing wiring or upgrading services and facilities.

- ***The Order Increases the Infrastructure Cost Burden Borne by Property Owners; Expanding its Scope Will Only Increase This Cost Burden, Which Is Also Likely To Deter Competitive Entry.***

If property owners are no longer able to enter into agreements to allocate infrastructure costs without giving up important contractual rights, their only other “option” will be to bear these costs entirely on their own. Further altering the current market mechanism for allocating infrastructure costs by eliminating marketing exclusivity would shift more costs onto property owners. Property owners would have two choices: Accept the resulting cost increase, or find other ways to lower their costs. Owners that opt to accept the cost increase will in turn be forced to choose between a lower return on investment and increasing rents charged to residents.

²⁵ Order at ¶ 26.

Although it might appear that shifting costs to owners and their residents would advance Commission policy by favoring the communications industry, this is not true. First of all, there is no indication in the Communications Act that Congress intended to favor communications providers over property owners in this fashion. But more fundamentally, one must first examine the owner's other option, which is to reduce costs.

In a world of limited provider cost reimbursement, owners can reduce their communications-related costs by (1) installing lower-cost infrastructure in instances in which they pay for such infrastructure directly; or (2) limiting the number of providers who have access to their properties. In both instances the result will be, on average, reduced access to competitive services by residents.

In the first instance, owners would have reduced incentives to pay for high-quality structured wiring systems that could be used by multiple providers to deliver advanced services. In the second instance, each additional provider that serves a building imposes additional costs on the property owner, especially in those cases in which new infrastructure is required by the provider to deliver its service. The leading example of this is Verizon's FTTP network. But it is also true in cases in which existing infrastructure must be upgraded: many existing buildings have outdated cable infrastructure. For example, since the year 2000 the Commission's telephone wiring rules have set Category 3 wiring as the minimum standard,²⁶ but today buildings must install at least Category 5 telephone wiring and RG-6 coaxial cable to provide up-to-date services.²⁷ Much existing infrastructure is either unable to carry high speed Internet or

²⁶ 47 C.F.R. § 68.213(c)(1).

²⁷ See B. Perkins, "Dumb Wiring Thwarts Smart Homes," *Realty Times* (Aug. 22, 2005), attached as Ex. G. This fact alone suggests that the Commission has paid insufficient attention to inside wiring and related issues, and is acting precipitously in this docket.

other new digital services at a satisfactory quality level, or needs to be reconditioned. Many buildings, for example, will be unable to carry AT&T's U-verse product without replacing or upgrading their copper networks.²⁸

Owners understand the need for up-to-date services in their buildings. They are willing to pay part of the cost of making those services available precisely because they are critical to residents and therefore to their business. But if they have to bear too much of the cost they will not be willing to bear that cost twice. They will make the trade-off between making available one provider with the highest quality services the economics of serving the building will justify, and reducing their return on investment from what is, after all, their property. Developers and operators of apartment properties make these judgments and trade-offs every day. In practice, this means that in many buildings, once one provider has access to the property using an up-to-date network for state of the art services, the owner will have no incentive to allow another provider in: the provider will not be paying for a large enough share of the infrastructure cost to justify any further investment by the property owner. Consequently, although the Commission's goal is to introduce competition into MDUs, any further regulation that imposes additional costs on property owners – or more specifically limits their ability to reduce costs -- will have exactly the opposite effect.

Although the details vary, the same problems arise in both new construction and existing buildings.

New Construction. As stated above, each new provider imposes additional costs on the owner. The owner may be willing to obtain the benefit of competitive service for residents in the

²⁸ For a thorough discussion of the limitations of existing infrastructure encountered in MDU buildings, see H. Pye, "Valuing MDU Bandwidth: Before you buy an MDU community,

building, but at some point, depending on the demographics of the building, the owner's business model, the costs involved, and other factors, that benefit may be outweighed by the degree of the additional burden. In the current market, in new construction, cable companies typically will agree to pay a share of the owner's costs in return for an exclusive marketing agreement for video service, while telephone companies will agree to pay a share of those costs in return for an exclusive marketing agreement for voice service.²⁹ Any portion of these infrastructure costs that is not reimbursed by the providers ends up in the long-term capital cost of the building, thus affecting the building's value and ultimately becoming reflected in rents. Thus, any Commission regulation that has the effect of reducing reimbursements to owners will ultimately impose higher costs on residents.

For example, the chart attached as Exhibit 1 to the Pye Declaration illustrates the typical communications infrastructure costs that a property owner will incur to wire a new building for triple-play competition between a cable company and a telephone company, and the typical reimbursements it will receive from the providers from exclusive marketing agreements. As the chart reveals, a property owner that decides to install communications infrastructure capable of supporting two video providers typically can expect to incur up-front construction costs in the range of \$670 to \$1075 per unit in a new garden style MDU, and of \$565 to \$915 per unit in a new high rise MDU. But under existing rules, the property owner can only expect to receive about half that amount over a 10 year period in reimbursements and fees paid by providers under exclusive marketing agreements. The net costs borne by the property owner will vary from

examine the low-voltage wiring for four types of problems that may affect video service provision," *Broadband Properties* (May 2007), 48-54, attached as Exhibit H hereto.

²⁹ Acker Decl. at ¶ 10. Exclusivity regarding Internet service is relatively rare.

\$300 to \$610 per unit – a significant burden.³⁰ Eliminating marketing exclusivity as an option will force the owner to bear the entire cost, thus doubling the total burden on the owner, assuming the parties do not choose an exclusive easement or wiring agreement instead.

More importantly, however, if an owner finds itself unable to recover the costs of multiple provider networks in a building, it may choose to allow only a single triple-play provider to serve the building.³¹ As we discussed in our opening comments, this provider may well be the incumbent local exchange carrier, rather than the cable company, simply because a significant number of potential residents still demand service from the brand name “Bell” telephone company. If an owner finds its costs will be increased by allowing multiple providers to serve the building, and based on its needs in a particular property decides to grant access only to a single provider (regardless of whether that agreement is exclusive or not), that single provider is more likely to be the telephone company than the cable company.³² The apartment industry is concerned that the Commission’s intrusion into this area will inadvertently skew the market, and the Commission so far has refused to consider this issue.

In any event, regardless of any such distortion in favor of one class of provider, any further Commission regulation that restricts the ability of property owners to obtain compensation, such as a prohibition on entering into exclusive marketing agreements, will force

³⁰ Pye Decl. at ¶¶ 8-9, and Ex. 1 thereto.

³¹ *Id.* at ¶¶ 10, 14.

³² This is so at least in the case of Verizon, because Verizon is proving its ability to provide the triple play effectively. It is much less likely to be true in the case of AT&T, whose video technology is perceived to be ineffective by the apartment market, and even less so in the case of Qwest. Even in the service territories of the latter companies, where the cable company might have an advantage, not only will the property owner still face pressure to allow access for the telephone company’s traditional copper-based service, but the telephone company may refuse to provide voice service at all unless it obtains access for other services as well.

more owners to consider this quandary. Owners in new construction situations may find it commercially reasonable to avoid assuming the additional costs of multiple networks on their properties, and thus the Commission's own rules will create market incentives that directly undercut one of the Commission's stated goals.

Existing buildings. The situation in existing buildings is more complex, and impossible to describe in a single, general fashion. Each building is truly unique.³³ Service providers and owners must consider each building separately in deciding whether the service provider believes it can make money on the property. Contrary to the Commission's assumptions, the fact that providers can earn additional revenue streams from the triple play does not mean that it is a given fact that providers will all overbuild every building. The fact is that in deciding whether to serve particular properties, providers evaluate buildings individually, essentially as separate, individual markets, in terms of the penetration levels they think they will be able to achieve, balanced against the cost of extending service to the property. The cost of extending service will depend on the lay-out of a building and its existing wiring, the quality and condition of that wiring, and whether the property owner or the incumbent provider owns the wiring. Verizon, for example, has shown that it is often willing to extend its service to existing properties where it can obtain access to existing wiring. If an overbuild is required, however, the cost to both the owner and the provider go up. And any increase in capital costs is of great importance in this market, because most existing buildings are owned and operated by firms that purchase properties for the express purpose of operating them. They make a profit on the difference between the acquisition costs plus operating costs, and purchase properties on the assumption that capital expenses will be minimal. These companies simply have not budgeted for substantial communications

³³ Pye Decl. at ¶ 11.

infrastructure upgrades on these properties, and therefore have limited funding available for that purpose.³⁴ If the Commission interferes in the market by limiting opportunities for future cost reimbursement, such as by prohibiting exclusive marketing arrangements, the Commission will, on the whole, reduce the availability of competitive infrastructure.

Because of the complexity and diversity of this market it is difficult to generalize about the effects of prohibiting exclusive marketing agreements in existing buildings, but it seems certain that in a significant number of properties, restrictions on the ability of property owners to obtain cost reimbursement will have the effect of reducing the deployment of competitive infrastructure. Furthermore, it is also very clear that the same thing will happen in an even more substantial number of new construction projects.

C. Regulation of Marketing Agreements Would Ultimately Be Ineffective.

In the end, any attempt by the Commission to regulate marketing agreements would be futile. The Commission cannot force an owner to market another provider's services: Were the Commission to ban exclusivity clauses, an owner could still refuse to market a second provider. Just as an owner can refuse to grant access to a competing provider, it could refuse to agree to marketing terms in any agreement with a competitor. Since the Commission acknowledges that it has no power over property owners, the Commission would have no way of forcing property owners to perform marketing services. Consequently, banning exclusive marketing clauses would not prevent exclusive marketing in practice.

³⁴ *Id.*

III. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO REGULATE EXCLUSIVE MARKETING AGREEMENTS.

The comments of the Real Access Alliance responding to the original NPRM explained in detail why Section 628 of the Communications Act does not apply to any agreements between property owners and cable providers.³⁵ The Commission's misreading of the statute notwithstanding, Section 628 is concerned solely with contracts for the acquisition of video programming by competitive programming providers. This is evident from the language, structure and legislative history of Section 628. We will not restate those arguments in full here, but they remain valid, and we anticipate that they will be vindicated in the pending appeal of the Order.

In any event, even if the Commission had the authority to apply Section 628 to building access agreements, by its terms Section 628 does not apply to marketing agreements. First, Section 628 only bans "unfair" or "deceptive" acts. For all the reasons stated in the discussion of cost reimbursement, exclusive marketing agreements are not unfair or deceptive – property owners know exactly what they are doing and why they are doing it.

Second, marketing agreements do not "prevent" or "hinder significantly" the distribution of programming. Marketing agreements do not "prevent" service by another party. "Prevent" means "to keep from happening" or "to keep (someone) from doing something,"³⁶ and exclusive marketing agreements do not prohibit competitive entry. Indeed, grants of marketing rights are typically included in a separate agreement from any contract related to the delivery of service in a building. In other words, marketing contracts memorialize a particular type of transaction, in which a property owner makes certain commitments to a service provider, in return for stated

³⁵ RAA Comments at 29-36.

³⁶ WEBSTER'S II NEW COLLEGE DICTIONARY 876 (1999).

consideration. They do not “prevent” a competitor from providing service, and the Commission has no more power over these agreements than it does over billboard advertising contracts, or any other type of advertising and marketing agreement a cable operator may enter into. If the Commission is concerned simply with the prospect that apartment residents may not have access to a choice of providers, there is no reason to ban or regulate such agreements.

Nor do marketing agreements “hinder significantly” competition, because they do not obstruct or impede competition. “Hinder” means “to get in the way of” or “to impede or delay the progress of.”³⁷ The mere fact that the existence of a marketing agreement might be a factor in a potential competitor’s analysis does not mean such an agreement hinders competition. To “hinder” does not mean to “discourage.” Indeed, such a reading would twist the statutory phrase beyond recognition, because the mere presence of a competitor could be construed as a hindrance under such a reading. Thus, any attempt to regulate marketing agreements under Section 628 must rely on an illogical reading of the statute.

Furthermore, the building owner is not the only source of information regarding which service providers are available in a building. Providers principally advertise through mass marketing techniques, television commercials, direct mailings, and the like. In some cases, the building owner may not even know that a service provider can provide service to its building. Exclusive marketing arrangements do not prohibit other service providers from engaging in mass marketing that may reach residents of any buildings that happen to be subject to such arrangements. Therefore, if a building owner represents only one service provider for marketing purposes, that arrangement alone cannot be said to “harm” competitive entry – any more than any other marketing effort that may influence residents’ choice of provider.

³⁷ WEBSTER’S II NEW COLLEGE DICTIONARY 523 (1999).

In sum, even if the Commission had the authority it claims under Section 628, by its own terms Section 628 does not apply to marketing agreements between property owners and video service providers.

IV. THE COMMISSION CANNOT AND SHOULD NOT REGULATE BULK AGREEMENTS.

For the Commission to ban or regulate bulk service agreements would be nothing short of peculiar: Apartment residents obtain enormous financial benefits under bulk service agreements, and Congress has explicitly endorsed such contracts.

A. Bulk Agreements Benefit Subscribers.

There is no question that bulk agreements benefit video service subscribers. Under a bulk agreement, an apartment owner ensures that every unit on a property has access to cable service at a significant discount. The amount of the discount is typically very large: as much as 40-60% over the price charged single family residents in the same geographical area.³⁸ The Commission has stated that competition between wireline providers can result in price reductions of between 13 and 17 percent.³⁹ Price reductions at that level simply do not compare to what many apartment residents are able to obtain. This is by any measure a real benefit.⁴⁰ For the Commission to interfere with this opportunity for residents to save substantial amounts of money would be contrary to the public interest and an abuse of whatever authority the Commission might assert in this area.

³⁸ Pye Decl. at ¶ 17.

³⁹ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 at ¶ 50, n. 183 (2007).

⁴⁰ *Id.*

In a typical bulk agreement, the owner pays the provider a flat rate for service to the entire building. Residents then receive free service at a prescribed level. The channel line-up covered by the bulk service agreement is normally the provider's expanded basic tier or its equivalent, but the line-up may be tailored to the building.⁴¹ Residents may individually order premium packages from the provider at an additional cost.⁴²

As we have repeatedly stated in this and other proceedings, the apartment industry is extremely diverse and competitive, and many owners have adopted specific business strategies to differentiate themselves from other property owners. Although bulk cable agreements are relatively rare in the apartment industry, for some property owners in certain markets they are an important tool for attracting and retaining residents.⁴³ The Commission should not patronize apartment residents by presuming that they do not consciously choose to rent apartments in buildings that have bulk deals. Nor should the Commission presume to choose for residents, who may have concluded that having a choice of two providers offering essentially identical video service is less important than a substantial savings on the cost of service.

For example, some owners have determined that bulk service is attractive as an amenity for certain segments of the apartment market. Owners have learned that one of the chief complaints of residents is the difficulty of getting cable, telephone and Internet providers to turn on their service when they move into an apartment. Surveys of residents have shown that first impressions are lasting impressions, so owners work very hard to make the move-in process as smooth as possible. The timing of communications service installation is not within the property owner's control, but the owner must deal with the consequences. This kind of problem frustrates

⁴¹ Pye Decl. at ¶ 16.

⁴² *Id.*

residents and increases the likelihood that they will be unhappy with their experience in the building, making them more likely to move out. For this reason, some owners have deliberately promoted the practice of offering bulk service: The service is connected all the time, so that when the resident moves in, no further action is needed.⁴⁴ The bulk service thus saves the resident, the owner, and the operator much time and trouble.

Furthermore, the Commission's analysis of these issues in the past has failed to note the frequency with which apartment residents move. Although there are many apartment residents who remain in the same buildings for long periods, the apartment market as a whole is very fluid. Annual turn-over in the apartment market is 50%, on average:⁴⁵ Most renters move often, and for many reasons. Renters understand their choices and make rational decisions about where they want to live. If a resident concludes that he or she is not happy with bulk service, he or she can move to a building without it.

In addition, many people choose to live in apartment buildings precisely because they do not want to worry about a whole range of issues associated with property ownership, whether it be mowing the lawn, fixing the roof, replacing the refrigerator, or any of the other myriad of problems for which single family homeowners are responsible. A bulk service agreement may be one of the reasons to live in a particular apartment building.

Similarly, the price reductions offered by bulk service agreements are especially valuable to low income residents and senior citizens living on fixed incomes.

⁴³ *Id.* at ¶ 18.

⁴⁴ *Id.* at ¶ 15.

⁴⁵ Institute of Real Estate Management, Income Expense Report (2008).

In short, bulk agreements directly benefit a wide range of Americans in different ways. The Commission should not interfere with any of those benefits.

B. The Cable Act Gives the FCC No Authority To Ban Bulk Agreements.

The Commission has no authority over bulk agreements, particularly in any geographic area in which a local exchange carrier is providing video service. Not only do bulk agreements neither hinder nor prevent service by a competitor for the same reasons that marketing agreements do not, but Congress has specifically endorsed the use of bulk discounts in Section 623(d).

Even if Section 628 applied to agreements between property owners and cable providers, by its terms it would not apply to bulk service agreements for the same reasons discussed above in connection with marketing agreements. The existence of a bulk agreement does not in itself “hinder significantly” or “prevent” a competing provider from providing service. Competitors can still obtain the right to serve a building and residents still have the ability to choose service from the competing provider. Furthermore, and more fundamentally, it is simply impossible to characterize an agreement that offers residents discounts of as much as 40-60% over the prevailing single family rate as an “unfair method[] of competition or [an] unfair or deceptive act[] or practice[].”

In addition, after Section 628 was enacted, Congress deliberately amended the Communications Act in 1996 to permit cable operators to offer bulk rates in MDUs. In 1992, Congress had established the uniform rate requirement, which still requires cable operators to charge the same rates to single family residents throughout the geographic area served by a cable system. Section 623, 47 U.S.C. 543(d). In its original form, however, Section 623(d) severely limited the ability of cable operators to offer bulk rate discounts in apartment buildings and other

MDUs. If bulk rates were offered, the operator had to make the same rate available in all MDUs.⁴⁶ To remedy this, Section 301(b)(2) of the Telecommunications Act of 1996⁴⁷ added the following language to Section 623(d):

This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition . . . Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit.

Congress clearly intended to encourage bulk discounts; the legislative history states:

Subsection (g)⁴⁸ amends section 623(d) of the Communications Act to exempt bulk discounts to [MDUs] from the uniform rate requirement. Current Commission regulations require that if a cable operator offers a lower rate in one MDU it must offer the same low rate to MDUs across the franchise area. The Committee finds that this regulation does not serve consumers well by effectively prohibiting cable operators from offering *lower* prices in an MDU even where there is another distributor offering the same video programming in that MDU.⁴⁹

In other words, Congress specifically approved of bulk discounts, and wanted cable operators to be able to offer different bulk discounts in different buildings, depending on the competitive situation.

The only limitation Congress placed on cable operators was that they may not offer bulk discounts that are “predatory.”⁵⁰ Section 623(d)(2) provides a specific mechanism for the

⁴⁶ *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket 92-266, FCC 93-177, 8 FCC Rcd 5631 at ¶ 423-4 (1993); *aff’d in relevant part by Time Warner Entertainment Co. v. FCC*, 56 F.3d 151, 191 (D.C. Cir. 1995).

⁴⁷ *Telecommunications Act of 1996*, Pub. Law No. 104-104, 110 Stat. 56 (1996).

⁴⁸ The language of the 1996 amendment originally appeared as Section 202(g) of H.R. 1555.

⁴⁹ H. REP. NO. 204, 104th CONG., 1st SESS. at 109 (emphasis in original).

⁵⁰ We are not aware of any court cases or Commission decisions that address the meaning of the term “predatory” as used in this statute, but it is logical to assume that Congress had in mind the antitrust law concept of “predatory pricing” such as that found in the Sherman Anti-Trust Act.

Commission to receive and resolve complaints that a provider is offering predatory bulk discounts. The Commission cannot now impose a general ban or limitation on the use of bulk agreements themselves, when Congress has expressly recognized their value. Because Congress has spoken directly to the issue of bulk discounts (authorizing their use), and granted the Commission very limited and specific authority only over predatory pricing complaints, the Commission cannot seek to regulate such agreements under some other guise or claim of regulatory authority.⁵¹

Furthermore, the Commission only has the power to regulate rates under Section 623 when there is no effective competition in a geographic area.⁵² The Commission has no power over cable service rates at all if there is effective competition. Not only does a local exchange carrier's mere entry into the video market in a franchise area create effective competition by the express terms of Section 623(l)(1)(D), but the Commission routinely makes findings of effective competition in franchise areas based on the level of direct broadcast satellite penetration.⁵³ Most

In anti-trust law, predatory pricing generally involves pricing below an acceptable measure of the provider's costs. *See* 58 C.J.S. Monopolies § 83, Low or predatory pricing (2008).

⁵¹ The Commission may argue that it is merely interpreting ambiguous language in Section 628, as it is permitted to do under *Chevron, U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842-43 (1984). Before applying *Chevron*, however, a court must consider whether Congress even meant to delegate authority over the question at issue (i.e. bulk discounts) to the agency. In this case, Congress made such a delegation, but a very narrow one, under Section 623(d)(1). Section 628 cannot be interpreted to override that limited authority. *See, e.g., FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000) ("Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion"); *State of Texas v. United States*, 497 F.3d 491, 503 (5th Cir. 2007) ("It stands to reason that when Congress has made an explicit delegation of authority to an agency, Congress did not intend to delegate additional authority *sub silentio*").

⁵² Section 623(a)(2).

⁵³ *See* Section 623(l)(1)(B); *In the Matter of Falcon Community Ventures I, L.P. d/b/a Falcon Cable TV Petition for Revocation of the Certification of the City of Roseburg, Oregon to Regulate Basic Cable Rates*, Memorandum Opinion and Order, 13 FCC Rcd 12503 (1998); *In*

of the country is therefore now subject to effective competition under the Commission's tests, particularly the areas that the Commission is concerned with, given that the impetus for this proceeding has been the entry into the video market by the telephone companies. Thus, under the Congressional scheme, any power the Commission might have had to address bulk service rates no longer exists. By statute, cable operators can charge any rate they choose in any area that is subject to effective competition.⁵⁴

Finally, the Commission's ancillary authority does not extend to bulk agreements. The Supreme Court has held that the Commission may exercise authority that is "reasonably ancillary to the effective performance of the Commission's various responsibilities."⁵⁵ In this case, Congress has expressly removed cable rates, including bulk service rates, from the Commission's purview. The Commission cannot now give itself what Congress took away under a claim of ancillary jurisdiction.⁵⁶

V. THE COMMISSION SHOULD NOT EXTEND THE RULE TO INCLUDE PRIVATE CABLE OPERATORS.

The Commission has recognized that exclusive agreements perform a valuable function in creating competition, by allowing small competitors to recover the capital investment

the Matter of Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Communications Petition for Determination of Effective Competition in Citrus County, Florida, Memorandum Opinion and Order, 15 FCC Rcd 8155 (2000).

⁵⁴ Incidentally, the legislative history to Section 628 states that "exclusivity can be a legitimate business strategy when there is effective competition." S. REP. NO. 92, 102d CONG. 1st SESS. (1991) at 28.

⁵⁵ *U.S. v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968).

⁵⁶ *See American Library Ass'n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005).

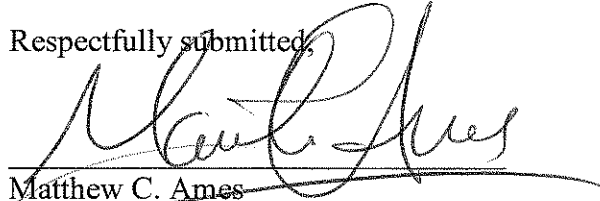
necessary for them to provide service in individual buildings.⁵⁷ Nothing has changed since 2003: Small providers still exist, they still create competitive alternatives, they still need to recover their capital investments to remain viable businesses, and they still need the option of exclusivity to recover those investments. Verizon's entry into the market only means that the private cable industry is operating in an even more competitive environment. Apartment residents and property owners benefit from the presence of small competitors in the marketplace, and the Associations urge the Commission not to extend the ban on exclusivity clauses to additional classes of providers.

⁵⁷ *Telecommunications Service Inside Wiring, Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, First Order on Reconsideration and Second Report and Order*, 18 FCC Rcd 1342 (2003) (2003 *Inside Wiring Order*), at ¶¶ 59-71.

CONCLUSION

For all the foregoing reasons, the Commission should refrain from any regulation of exclusive marketing agreements or bulk video service agreements.

Respectfully submitted,



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EXHIBIT A

DESCRIPTION OF THE COMMENTERS

- The Institute of Real Estate Management (“IREM”) educates real estate managers, certifies the competence and professionalism of individuals and organizations engaged in real estate management, serves as an advocate on issues affecting the industry, and enhances and supports its members’ professional competence so they can better identify and meet the needs of those who use their services. IREM was established in 1933 and has 10,000 members across the country.
- The National Apartment Association (“NAA”) has been serving the apartment industry for 60 years. It is the largest industry-wide, nonprofit trade association devoted solely to the needs of the apartment industry. NAA represents approximately 29,597 rental housing professionals holding responsibility for more than 4,911,000 apartment households nationwide.
- The National Association of Real Estate Investment Trusts (“NAREI”) is the national trade association for real estate investment trusts (REITs) and publicly-traded real estate companies. Its members are REITs and other businesses that own, operate, and finance income-producing real estate, as well as those firms and individuals that advise, study and service those businesses.
- The National Multi-Housing Council (“NMHC”) represents the interests of the larger and most prominent firms in the multi-family rental housing industry. NMHC’s members are engaged in all aspects of the development and operation of rental housing, including the ownership, construction, finance, and management of such properties.
- The Real Estate Roundtable (“RER”) provides Washington representation on national policy issues vital to commercial and income-producing real estate. RER addresses capital and credit, tax, environmental, technology and other investment-related issues. RER members are senior executives from more than 200 U.S. public and privately owned companies across all segments of the commercial real estate industry.

EXHIBIT B

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of

Exclusive Service Contracts for Provision of
Video Services in Multiple Dwelling Units
and Other Real Estate Developments

Further Notice of Proposed Rule Making

MB Docket No. 07-51

**DECLARATION OF TERRY FULBRIGHT IN SUPPORT OF
COMMENTS OF THE REAL ESTATE ASSOCIATIONS**

I, Terry D. Fulbright, declare as follows:

1. I submit this declaration in support of the Comments of the Real Estate Associations in response to the Commission's Further Notice of Proposed Rule Making in the above-captioned matter.
2. I currently serve as Vice President, Director of Ancillary Services for UDR, Inc. (UDR). As of January 29, 2008, UDR is the third (3rd) largest apartment REIT in the nation.
3. I have been in charge of ancillary services at UDR since 2005. In this position, I am responsible for managing and coordinating the deployment of communications services in UDR's existing apartment buildings and its new construction projects. This includes soliciting proposals from providers to deploy voice, video and data services to existing buildings and new properties, negotiating the terms of the service and related agreements, and monitoring the performance of the providers serving UDR's properties.

Background

4. As of January 29, 2008, UDR, either directly or through its affiliates and subsidiaries, owns (or is in the process of developing) more than 250 apartment properties located in 14 states and the District of Columbia consisting of more than 65,000 existing residential apartment units with more than 6,000 additional units planned for development. At many properties, UDR has either entered or assumed a marketing agreement pursuant to which UDR provides some form of marketing support on behalf of a video service provider serving the property. Many such marketing agreements at UDR's existing properties are exclusive marketing agreements under which UDR assists in the marketing of only that provider's video services and is restricted from marketing other providers' video services at the property.

5. In my experience, UDR's exclusive video marketing agreements with incumbent providers have **not** been a barrier to the planned deployment of competitive video services at UDR's properties. To the contrary, my experience indicates that at least one large communications provider is eager to deploy its video services to UDR's existing properties despite the existence of exclusive marketing arrangements with incumbent video providers at the properties.

Nature of Exclusive Marketing Arrangements

6. Exclusive marketing agreements are distinguishable from the "exclusive access" or "exclusive service" clauses that were the subject of the Commission's Report and Order dated October 31, 2007 in this proceeding. UDR's exclusive marketing arrangements with incumbent video providers do not prevent UDR from granting access to its properties to competitive video providers. The exclusive marketing agreements only dictate the terms and conditions under which UDR will assist a provider in marketing a specific category of service to the residents of

the property. Marketing “support” provided by UDR under the marketing agreements typically involves distributing marketing materials on behalf of a provider’s service and allowing that provider to set up promotional displays pertaining to that service in certain business and common areas of the property (*i.e.*, the leasing office). These agreements do not in any way restrict residents from ordering competitive services or receiving direct marketing materials from competitive service providers.

7. Exclusive marketing agreements are specific as to the service that UDR is marketing on behalf of a provider. At a vast majority of UDR’s properties, UDR markets one provider’s video service, another provider’s voice service, and one or more providers’ high speed Internet services. Since there are multiple providers serving these properties, each usually with its own specific marketing rights, these providers have ample opportunities to perform their own marketing of services that UDR does not market on their behalf. For example, any competitive provider whose video services are not marketed by UDR is free to market its video products to residents of the property through direct mail and other marketing channels that do not involve UDR’s direct assistance. UDR never suggests to residents that they are restricted to selecting any particular provider for any specific service. UDR’s leasing staff has been instructed to provide complete and truthful answers to all questions from residents regarding which providers and which services are available at a property.

8. Under UDR’s exclusive marketing arrangements with incumbent video providers, UDR is free to let other providers deploy competitive video services so as to give residents a choice of service providers. UDR is aggressively taking advantage of that opportunity. The existence of exclusive marketing contracts has not prevented the planned deployment of competitive video services at UDR’s properties.

UDR's Experience with Competitive Video Providers

9. UDR owns a significant number of properties in areas where the incumbent local exchange carrier's ("ILEC's") new fiber-enabled video service is currently available or is scheduled to be available in 2008. UDR has engaged in substantial negotiations with the ILEC regarding the terms and conditions of the deployment of that ILEC's video service to such properties, and the two sides recently executed license agreements at a number of existing properties in the ILEC's fiber footprints that authorize the ILEC to install its fiber facilities and deploy its fiber-enabled video services at such properties. UDR anticipates that, prior to the end of 2008, it will enter similar license agreements for many other properties that are within the ILEC's fiber footprint.

10. At a majority of the properties where UDR and the ILEC have either executed license agreements for the deployment of fiber-enabled video services or plan to execute license agreements in the coming months, UDR is subject to marketing agreements with the incumbent providers that require UDR to market the incumbents' video services on an exclusive basis. Prior to negotiating and entering license agreements for the ILEC's deployment of video services, UDR informed the ILEC that it would have no on-site marketing rights at these properties with respect to its video services and that UDR could not assist the ILEC in marketing its video services to residents of the properties. Despite these marketing restrictions, the ILEC has proceeded to execute license agreements at certain properties and has offered to execute license agreements at many others.

11. At properties where the license agreements have already been executed, the ILEC has diligently worked with UDR on the forthcoming planned deployment of its fiber-enabled video services. UDR anticipates that the ILEC's competitive video service will be available at

many existing properties in the first half of 2008. In my experience, the fact that those properties are subject to exclusive video marketing agreements with incumbent providers has simply not been a hindrance to the ILEC. At no point has the ILEC stated or suggested to UDR that it was reluctant or hesitant to deploy video services at any property because of the existence of UDR's exclusive marketing agreements with the incumbent provider at the property.

12. I declare under penalty of perjury that the facts stated herein are true and correct to the best of my knowledge and belief.

This declaration was executed on the 5th day of February, 2008, at Richmond, Virginia



Terry D. Fulbright



Fiber-To-The-Premises

Multiple Dwelling Unit (MDU)

Multi-Customer ONT Architecture

Fiber Distribution Specifications and Inside Wiring Specifications

Greenfield (New Construction) Applications

Rev. 2.0 - 4/23/07

Section 3.0: Updated to include the addition of the Rack Mounted Multi-Customer ONT option.

Figure C: Added to depict a typical Multi-Customer ONT deployment.

Section 5.0: Product list updated to include Multi-Customer ONT specifications.

Verizon has developed a Multiple Dwelling Unit ONT FTTP architecture to enable FiOS deployment within MDU communities. The architecture solutions are categorized in 2 types: Centralized & Distributed. The selection of the appropriate FTTP Architecture will be dependent on multiple factors inclusive of the MDU building architecture, access to telecommunications and video network infrastructure, and will be mutually agreed to by Verizon and the MDU owner/developer.

Overview

This document has been developed to provide guidance on the following:

- Overview of the various FTTP architecture solutions
- Technical specifications for all network components
- Verizon and MDU/Developer responsibilities for the deployment

Guidelines contained in the “Owner/Developer Responsibility” section are required as they are essential to operation of Verizon’s FTTP Network. These guidelines also highlight Verizon’s responsibilities in successfully deploying the FTTP architecture in the MDU environment.

1.0 FTTP Components Glossary:

Passive Optical Network Components

General Description of FTTP Components

Fiber Entrance Cable: Fiber Cable placed into the MDU building from the public Right-of-Way.

Fiber Distribution Hub (FDH): Network equipment required to house passive splitters and to terminate fiber distribution cables out to the FDTs. Depending on FTTP architecture selected, the FDH may be located inside or outside of the MDU building(s).

Fiber Distribution Cable(s): Fiber cable placed to distribute fiber network from the FDH to the FDT(s).

Fiber Distribution Terminal (FDT): Network equipment (passive) required to terminate the Fiber Drops from each ONT to the distribution fiber cable.

Fiber Drop: Riser, Plenum and Indoor/Outdoor rated fiber drop provides an optical signal from FDT to the ONT

Optical Network Terminal (ONT): Active network component that converts optical signal from single fiber into electrical impulses to deliver voice, data and video services.

Multi Customer ONT (MC ONT): ONT that is deployed in common space and is capable of serving multiple subscribers.

Power Components:

FTTP Multipurpose Power Supply Unit (FMPS): Power Supply for MC ONT that converts AC power to DC power and provides back-up battery power for the FTTP equipment in the event of a commercial power failure or other loss of AC power.

Video Components:

Coax Distribution Cable: Coaxial cable used to connect ONT video output to multiple Video Coax Tap Points

Video Coax Tap Point: The video distribution point to connect the backbone coax network from the MC ONT to the living unit Coax drop.

Video Amplifier: Network equipment to amplify the video signal to maintain high quality video. The preferred video design will not require amplification however some building architectures may necessitate the need for amplification.

Directional Coupler: Network equipment used to direct the video signal/power to another tap point in the MDU.

Voice and Data Components:

Low Pass Filter: The low pass filter series is used to filter out unnecessary channels or interference frequencies.

Interface Blocks: Network equipment used to connect the FiOS service from the MC ONT to the Telephone inside wiring for POTS and data services.

Broadband Home Router (BHR): The BHR permits digital entertainment and information content to be transmitted and distributed to multiple devices in the home.

VDSL Modem: Provided by Verizon with data offering in VDSL deployment areas.

Video Set Top Box (STB): Provided by Verizon for video services (as required). One set top box per TV.

Wiring Cabinets:

Centralized Structure Wiring Cabinet (CSWC): A builder provided, single interconnection point for all home wiring, which carry voice, data, and video services.

2.0 MDU Fiber Distribution Specifications:

General Property Requirements	These guidelines are generic and the type, quantities and location of network components will vary based on layout of MDU complex and the FTTP architecture. All components will be placed in locations mutually agreed upon between Verizon and the MDU owner/developer.
Verizon Responsibility	<p>Construction Build Out:</p> <ol style="list-style-type: none"> 1. Verizon will provide, install, connect and maintain the FDH, FDT, Fiber Entrance/Distribution Cables, and Fiber Drop inside the MDU at the time of construction build. (<i>Path Creation is the responsibility of the builder. See Builder/Developer Responsibilities below.</i>) 2. Verizon will properly seal all interior and exterior opening(s) after cable placement
Owner/Developer Responsibility	<p>Access for the placement of the fiber entrance cable from the public right of way into the MDU building central communication closet(s)</p> <ol style="list-style-type: none"> 1. Aerial access would require building attachment capabilities and entrance hole. 2. UG access would require (2)-4" conduits from property line to inside the MDU. 3. All duct requirements must meet minimum 36" bend radius requirements. <p>Space for mounting the FDH and associated splice closures:</p> <ol style="list-style-type: none"> 4. FDHs are available for internal or external installations. See Section 6.0 Product Specifications, page 11 for a list of all FDH sizes and port capacities. 5. Backboard 4'W x 8'H x ¾" D in accordance with NEC or local code 6. Recommended 1' spacing around the FDH for access and 30" front access. <p>Access for the fiber distribution cable from the FDH to the FDT(s)</p> <ol style="list-style-type: none"> 7. 4" short sleeve/conduit for access between stacked riser communication closets. 8. 4" conduit to connect building communications closets in Garden Style or Townhouse MDU complexes. See bend radius requirements described in # 3. <p>Space for mounting the FDT in communication closet(s):</p> <ol style="list-style-type: none"> 9. FDTs are available for internal and external installations. See Section 6.0 Product Specifications, page 11 for a list of all FDT sizes and port capacities. 10. Place 2'W x 2'H x ¾"D backboard in accordance with NEC or local code. Bottom edge of backboard should be approximately 48" from the floor. Indoor locations preferred. 11. Recommended 6" spacing around the FDT for access and 24" front access.

3.0 Multiple Customer ONT Architecture:

<p>Options</p>	<p>MC ONT Architecture Designs can generally be classified as a Centralized or Distributed design. Centralized Architecture will be the preferred design where access to new or existing House and Riser Cabling and Coax can be achieved from one location. Distributed Design will generally be used for buildings where access is available to new or existing House and Riser Cabling and Coax in intermediary closets and/or where distance of cabling may be beyond technological limitations of the Centralized ONT design.</p> <p>Two MDU ONT types are available for use. The Ethernet MC ONT (Tellabs Model #621/621R and Motorola #6000E) is the preferred ONT for MDU buildings that have new or existing dedicated CAT 5 wiring for data and the total loop length does not exceed 300' from ONT location to proposed router location in living unit. For buildings without access to dedicated CAT5 wiring for data, or where the distance exceeds the Ethernet distance limitation noted above, the vDSL MC ONT (Tellabs Model #625/625R and Motorola #6000V) will be the ONT selected.</p> <p>Note: Selection of Tellabs or Motorola MC ONTs will be dependent on seeding of Optical Line Terminal (OLT) equipment in the Verizon Central Office.</p> <p>Dependent on the MC ONT Architecture Design and the serving needs of the building, some or all of the MC ONT's and FMPS's will be installed at initial construction build out. For those buildings where Verizon has chosen to initially seed with less than 100% of the total required capacity, Verizon will systematically monitor growth in the building and proactively add capacity when needed. Ultimate space requirements will be identified and communicated during the initial construction build out and must be reserved for future growth.</p> <p>These guidelines are generic and the type, quantities and location of FiOS equipment will vary based on layout of MDU complex.</p>
<p>Verizon Responsibility</p>	<p>Construction Build Out:</p> <ol style="list-style-type: none"> 1. In addition to the Fiber Distribution Network components identified in section 2.0, Verizon will provide, install, test and maintain the MC ONT(s), FMPS(s), FMPS cabling, and all cabling and terminations necessary to interface with existing inside wire and coax cabling. <p>Service Order:</p> <ol style="list-style-type: none"> 2. Verizon will make all connections from Verizon terminations to existing Cat3, Cat 5, and Coax interfaces to deliver customer requested services. 3. Provide, install and test required CPE devices (BHR, Set Top Box, Video NIM, VDSL Modem) to deliver customer requested services.
<p>Developer/ Builder Responsibility</p>	<p>Wall space and/or floor space for placement of the MC ONT(s), FMPS(s), Power Cabling, Cat 3/Cat 5 Cabling, Voice and Data terminations, Video Tap Points or the Rack Mounted MC ONTs and associated equipment:</p> <ol style="list-style-type: none"> 1. 100% of ultimate space requirements to service building must be reserved.

**Developer/
Builder
Responsibility**

2. Preferred location is centrally located to target living units, where access to inside wiring and coax is available.
3. FMPS unit can be located up to 100' from MC ONT(s) using the specialized Verizon provided power cable.
4. FMPS units must be located within 8' of Power Receptacle(s) using the pre-connected power cord. An optional EMT entrance port is provided for hard wiring by a qualified electrician.
5. The relay rack mounted assembly will require a separately fused 20A twist lock receptacle NEMA L5-20R for every three FMPS units.
6. Sufficient ¾" plywood to mount all equipment in accordance with NEC and local code.
7. **Wall Mount Space Requirements:**
There are many variables that will dictate the amount of wall space required for a MC ONT solution. Verizon will require approximately 1.5 ft² of wall space per customer being served via the MC ONT. Please see Section 5.0 for specific equipment dimensions.
8. **Rack Mount Space Requirements:**
84" Rack assembly measures 84"x26"x22". Verizon requires 12" clearance on either side of the rack and at least 24" clearance in front of the rack.
50" Rack assembly measures 50"x26"x22". Verizon requires 12" clearance on either side of the rack and at least 24" clearance in front of the rack.

Refer to Diagrams A, B, & C for examples of ONT layouts in the Greenfield and Overlay environments.

Wire & Grounding Requirements

9. Ensure that all wiring installations adhere to NEC and local wiring guidelines.
10. Provide an NEC approved ground at each MC ONT location.
e.g. Power Company Ground (MGN), Structural Steel
11. The Coax (RG6, RG11) and inside wiring (CAT3, CAT5, CAT5e) should be centrally located for easy access and connection to the MC ONT. Alternative path creation choices must be reviewed and approved by Verizon Engineer. The preferred design is a Distributed MC ONT. This design utilizes an MC ONT to serve living units within the distance limitations of the Coax.
12. For Ethernet MC ONTs, the total loop length of CAT5 or CAT5e wiring should not exceed 300' from ONT location to proposed BHR location in living unit.
13. For VDSL MC ONTs, the total loop length of CAT3, CAT5, or CAT5e wiring should not exceed 500' from ONT location to BHR location in the living unit.

Multi-Customer Wall Mount Architecture: Distributed (24 Living units)

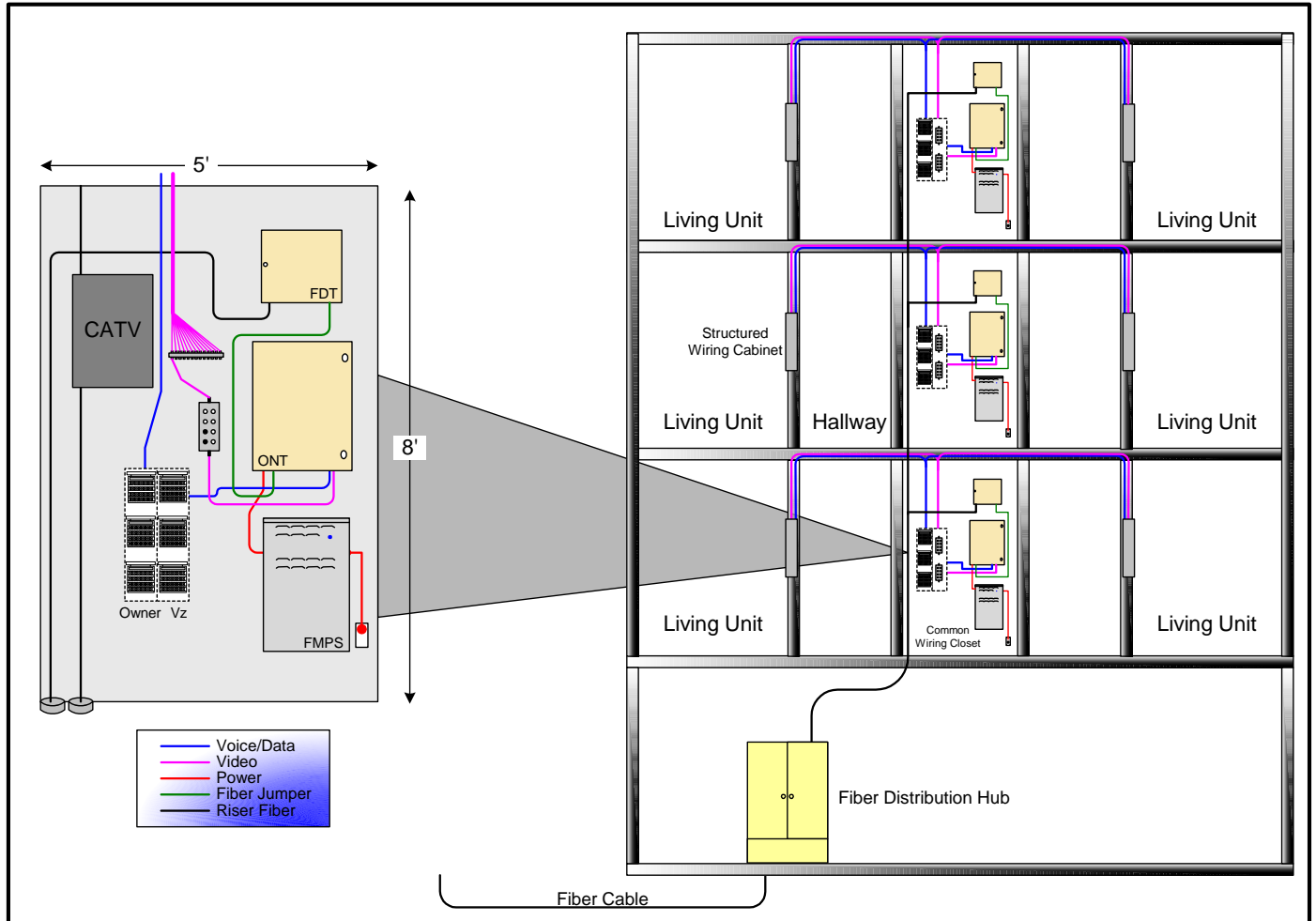


Figure A

Multi-Customer Wall Mount Architecture: Centralized (24 Living Units)

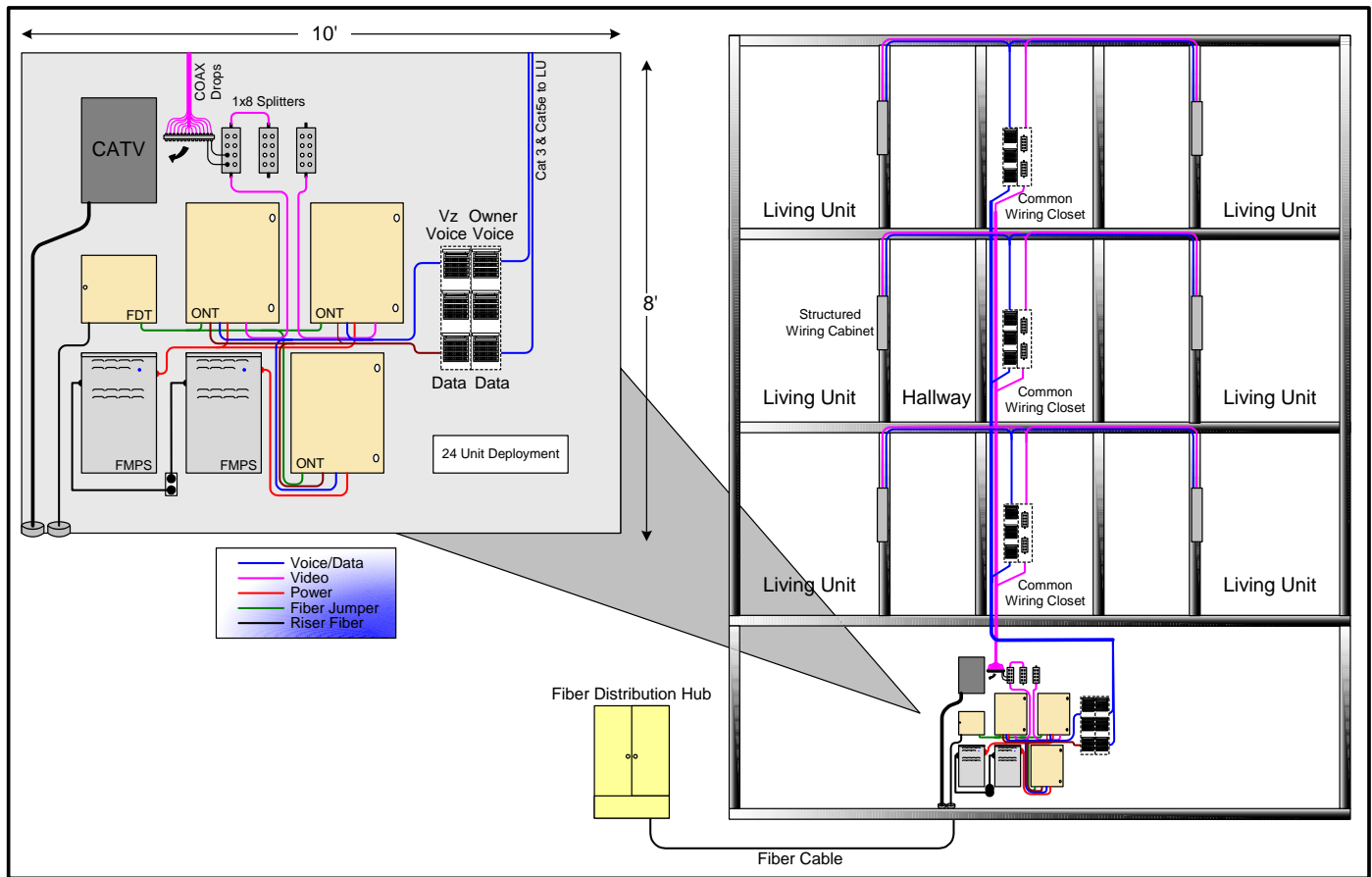


Figure B

Multi-Customer Rack Mount Architecture: Centralized

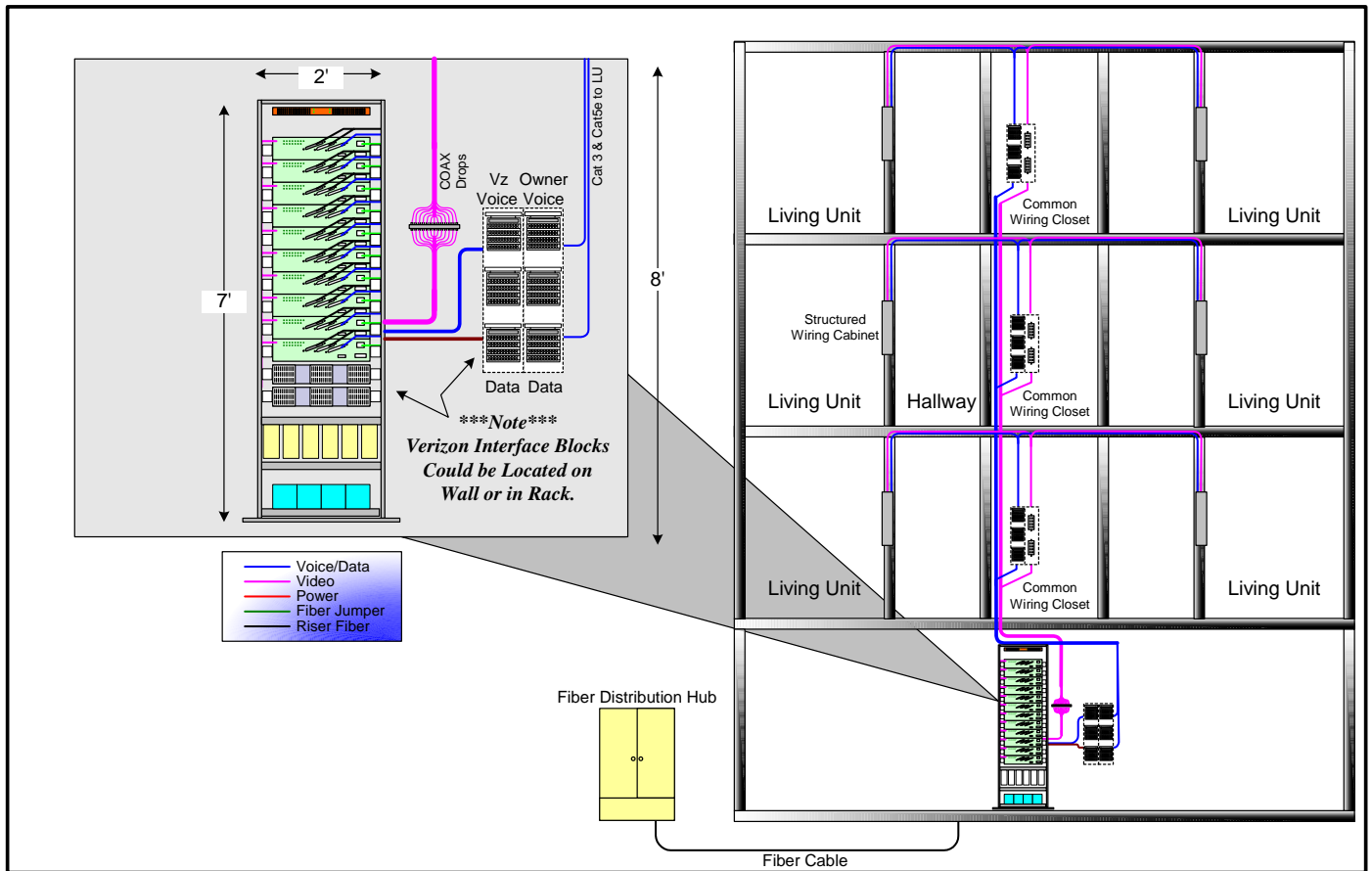
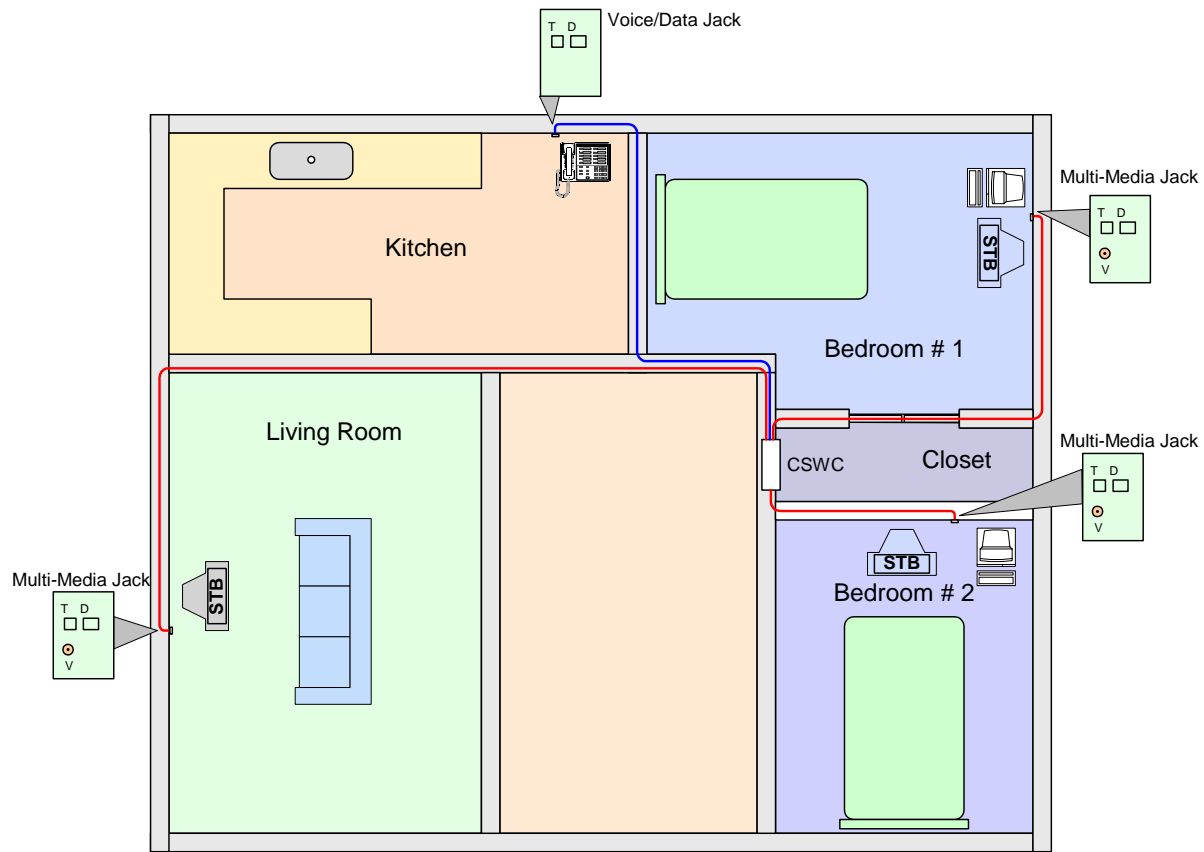


Figure C

4.0 Living Unit Wiring:





<p>Developer/ Builder Responsibility</p>	<p>The Developer/Builder is responsible for the following in each LU:</p> <ol style="list-style-type: none"> 1. Installation of all LU cabling such as CAT 5e (Internet), CAT 3 (minimum) (Telephone), and coax (RG6) wiring (Video) along with associated jacks in the interior of the LU. 2. Terminating all LU cabling (Voice, Internet, & Video) at the CSWC and outlet locations 3. Inside Wire (IW) <ol style="list-style-type: none"> a. All Inside Wire (IW) placed in the residence should be “home-run” back to the CSWC where they are terminated, tested and tagged per wall plate/jack location. b. Builder/occupant is responsible for placement, operation and testing of all IW c. <u>Voice IW</u>: CAT 5e UTP wire is suggested for all Voice services. d. <u>Data IW</u>: A separate CAT 5e UTP wire, is required for all broadband services provided via the Ethernet ONT. Distance from the wall plate/jack to the BHR cannot exceed 300’ for Ethernet. For vDSL deployments the distance from the wall plate/jack to the vDSL modem cannot exceed 500’. Wiring should be compliant with TIA/EIA 568B.1 standards. e. <u>Video IW</u>: A separate RG6 Coax cable (Tri-Shield, 77% Braid, capable of 1.3 GHz transmission) should be placed for each TV location. Cable should be run back to a bi-directional splitter (e.g. 1 x 4, 1.3 GHz capable) at the CSWC. Coax cable between the wall plate and the CSWC should not exceed 100’. 4. Jacks: <ol style="list-style-type: none"> a. <u>Multi-Media (MM) jack</u>: Verizon recommends a minimum of four (4) MM jacks that include an F-connector for video, RJ45 jack for data services, and a RJ11 jack for voice services. b. <u>Voice/Data jack</u>: Verizon recommends a minimum of two (2) RJ45 jack for data services and (1) RJ11 jack for voice services. <p>Note: CAT 5e can replace CAT 3. However, Developer/Builder must not use one CAT 5e wire for both Internet and voice because it changes the impedance of the wire. Additionally, the ringing voltage can interfere with the data causing service interruption. Single CAT5e placements may also hamper future data offerings greater than 50 MB/s.</p>
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Living Unit Wiring Example


5.0 MDU FTTP Product Specifications:

Passive Product Specifications


	Product	Dimension		Power Requirement
		Ports	Size	
	Interior Fiber Distribution Terminal	6 12 24 48	7"H x 12"W x 3"D 8"H x 14"W x 5"D 18.5"H x 13"W x 5"D 32"H x 13"W x 5"D	N/A
	Interior Fiber Distribution Hub	72/144 216 432	32"H x 21"W x 12"D 36"H x 21"W x 15"D 72"H x 21"W x 15"D	N/A
	Exterior FDT	6,12,24,48 Port 15"H x 14"W x 6.5"D		N/A
	Microduct Riser & Plenum	12.7MM/10MM Riser/Plenum 8.5MM/6MM Riser/Plenum		N/A

Wall Mount MC ONT Specifications

Tellabs MC 621/625 ONT Product Specifications


Product	Dimension	Power Requirement
 <p>Multi-Customer Optical Network Terminal Ethernet/VDSL</p>	<p>Tellabs 621/625 23"H x 19"W x 4"D Weight 17 lbs 8 Subs/16 POTS 8 Ethernet/VDSL Ports 33 dBmV video</p>	<p>Up to (2) 621/625 Per FMPS</p>

Motorola MC 6000E/V ONT Product Specifications


Product	Dimension	Power Requirement
 <p>Multi-Customer Optical Network Terminal Ethernet/VDSL</p>	<p>Motorola 6000E/V 19"H x 15"W x 11"D Weight 55 lbs 12 Subs/24 POTS 12 Ethernet/12 VDSL 34 dBmV video</p>	<p>(1) 6000E/V Per FMPS</p>

Rack Mount MC ONT Specifications



Tellabs 621R/625R Product Specifications

Product	Dimension	Power Requirement
 <p>Multi-Customer Optical Network Terminal Rack Mount Ethernet/VDSL</p>	<p>Tellabs 621R/625R 84" Rack Assembly 84" x 26" x 22" Up to 96 Customers 50" Rack Assembly 50" x 26" x 22" Up to 32 Customers</p>	<p>FMPS requires a separately fused 20A twist lock receptacle NEMA L5-20R for every three FMPS units</p>

Common MC ONT Product Specifications



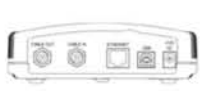
Product	Dimension	Power Requirement
 <p>FlexNet Multiple Power Supply</p>	<p>23.75"H x 14"W x 6"D Weight 25 lbs w/o Batteries Weight 75 lbs w/Batteries 8' Power Cord With Heater Option: -40° C to +46° C plus solar loading, 0- 95% humidity Without Heater Option: -10° C to +46° C plus solar loading,</p>	<p>Up to (2) FMPS (1) 15A 120V Up to (4) FMPS (1) 20 A 120V</p>

Distribution Product Specifications

	KRONE VDSL Blocks	5.6"W x 6.1"H x 3.5"D Termination for 1 MDU ONT	N/A
	KRONE Ethernet Blocks	5.6"W x 6.1"H x 3.5"D Termination for 1 MDU ONT	N/A
	1x8 Passive RF Splitter	3"H x 4"W x 1"D Weight .5 lbs 11 dB Loss thru Splitter	N/A

CPE Product Specifications

CPE Product Specifications

	Actiontec BHR 1424WR	4 Port Wireless Router	120V AC
		12.1"L x 5.6"W x 1.9"D Weight 3.3 lbs.	5V DC 3A Peak 10 Watts
	ZyXEL Modem Prestige 861	8.1"L x 6.34"W x 2.0"D Range 0° - 50° C	120V AC
		Includes built-in 4 Port Switch	MAX 9 Watts
	Motorola Video NIM	6"L x 5"W x 1"H	120V AC
		Weight 2 lbs	12V DC MAX 9 Watts



Fiber-To-The-Premises

Multiple Dwelling Unit (MDU)

Single Family Unit ONT Architecture

Fiber Distribution Specifications and Inside Wiring Specifications

Greenfield (New Construction) Applications

Verizon has developed a Single Family Unit ONT architecture to enable FiOS deployment within MDU communities. The SFU ONT architecture deploys fiber all the way to the Living Unit providing Voice, Data & Video.

This document has been developed to provide guidance on the following:

Overview

- Overview of the various FTTP architecture solutions
- Technical specifications for all network components
- Verizon and MDU/Developer responsibilities for the deployment

Guidelines contained in the “Owner/Developer Responsibility” section are required as they are essential to operation of Verizon’s FTTP Network. These guidelines also highlight Verizon’s responsibilities in successfully deploying the FTTP architecture in the MDU environment.

1.0 FTTP Components Glossary:

Passive Optical Network Components

Fiber Entrance Cable: Fiber Cable placed into the MDU building from the public Right-of-Way.

Fiber Distribution Hub (FDH): Network equipment required to house passive splitters and to terminate fiber distribution cables out to the FDTs. Depending on FTTP architecture selected, the FDH may be located inside or outside of the MDU building(s).

Fiber Distribution Cable(s): Fiber cable placed to distribute fiber network from the FDH to the FDT(s).

Fiber Distribution Terminal (FDT): Network equipment (passive) required to terminate the Fiber Drops from each ONT to the distribution fiber cable.

Fiber Drop: Riser, Plenum and Indoor/Outdoor rated fiber drop provides an optical signal from FDT to the ONT

Single Family Unit (SFU ONT): Optical Network Terminal deployed directly into living unit and serves only 1 subscriber

General Description of FTTP Components

	<p><u>Power Components:</u></p> <p><u>ONT Power Supply Unit (OPSU):</u> Power Supply for SFU ONT that converts AC power to 48VDC power required for the BBU.</p> <p><u>Battery Backup Unit (BBU):</u> Provides back-up battery power for the SFU ONT equipment in the event of a loss of AC power and power conversion from the OPSU to the ONT.</p> <p><u>Video Components:</u></p> <p><u>Video Network Interface Module (NIM):</u> Network equipment enables coaxial cabling to carry data traffic in lieu of CAT 5e cabling</p> <p><u>Voice and Data Components:</u></p> <p><u>Low Pass Filter:</u> The low pass filter series is used to filter out unnecessary channels or interference frequencies.</p> <p><u>Broadband Home Router (BHR):</u> The BHR permits digital entertainment and information content to be transmitted and distributed to multiple devices in the home.</p> <p><u>Video Set Top Box (STB):</u> Provided by Verizon for video services (as required). One set top box per TV.</p> <p><u>Wiring Cabinets:</u></p> <p><u>Centralized Structure Wiring Cabinet (CSWC):</u> A builder provided, single interconnection point for all home wiring, which carry voice, data, and video services.</p> <p><u>Structure-Optical Network Equipment (S-ONE):</u> Cabinet provided by Verizon to house all Regulated Demarcation Point Network Elements.</p>
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2.0 MDU Fiber Distribution Specifications:

General Property Requirements	These guidelines are generic and the type, quantities and location of network components will vary based on layout of MDU complex. All components will be placed in locations mutually agreed upon between Verizon and the MDU owner/developer.
Verizon Responsibility	<p>Construction Build Out:</p> <ol style="list-style-type: none"> 1. Verizon will provide, install, connect and maintain the FDH, FDT, Fiber Entrance/Distribution Cables, and Fiber Drop inside the MDU at the time of construction build. <i>(Path Creation is the responsibility of the builder. See Builder/Developer Responsibilities below.)</i> 2. Verizon will properly seal all interior and exterior opening(s) after cable placement
Owner/Developer Responsibility	<p>Access for the placement of the fiber entrance cable from the public right of way into the MDU building central communication closet(s)</p> <ol style="list-style-type: none"> 1. Aerial access would require building attachment capabilities and entrance hole. 2. UG access would require (2)-4" conduits from property line to inside the MDU. 3. All duct requirements must meet minimum the 36" bend radius requirement. <p>Space for mounting the FDH and associated splice closures:</p> <ol style="list-style-type: none"> 4. FDHs are available for internal or external installations. See Section

	<p>6.0 Product Specifications, page 13 for a list of all FDH sizes and port capacities.</p> <p>5. Backboard 4'W x 8'H x ¾" D in accordance with NEC or local code</p> <p>6. Recommended 1' spacing around the FDH for access and 30" front access.</p> <p>Access for the fiber distribution cable from the FDH to the FDT(s)</p> <p>7. 4" short sleeve/conduit for access between stacked riser communication closets.</p> <p>8. 4" conduit to connect building communications closets in Garden Style or Townhouse MDU complexes. See bend radius requirements described in # 3.</p> <p>Space for mounting the FDT in communication closet(s):</p> <p>9. FDTs are available for internal and external installations. See Section 6.0 Product Specifications, page 13 for a list of all FDT sizes and port capacities.</p> <p>10. Place 2'W x 2'H x ¾"D backboard in accordance with NEC or local code. Bottom edge of backboard should be approximately 48" from the floor. Indoor locations preferred.</p> <p>11. Recommended 6" spacing around the FDT for access and 24" front access.</p> <p>Access for the placement of Fiber Drop from the FDT to each LU</p> <p>12. Pathway that allows for the placement and maintenance of the fiber drop.</p>
Recommended Path Creation FDT - LU	<p>Micro Duct is the preferred path creation choice from the FDT to the LU. Micro Duct must meet the minimum following technical requirements.</p> <ol style="list-style-type: none"> 1. 8.5mm OD/6mm ID 2. Longitudinal Ribbing In The Lining 3. Silicone (Lubrication) Impregnated Lining 4. Contain a Minimum 50lb Pull Line <p>The Micro Duct path will not exceed 200', must contain no more than 10 bends, and must maintain a minimum 12" radius.</p> <p>Duraline is the contracted supplier of Microduct for Verizon. The contract has been negotiated to allow MDU owner/developers to purchase Microduct at a Verizon negotiated rate.</p> <p>Alternative path creation choices must be reviewed and approved by Verizon Engineer.</p>

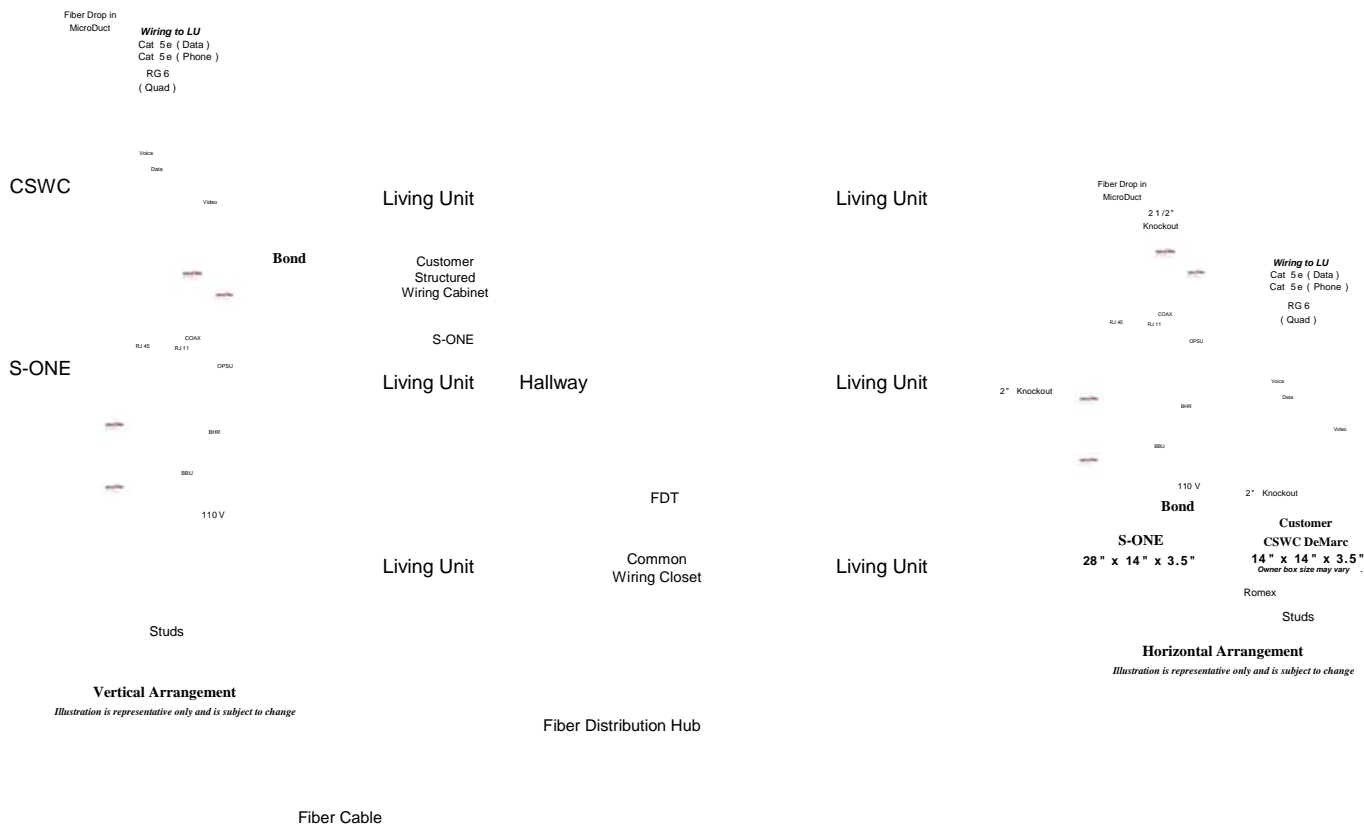
3.0 SFU ONT Architecture:

Options	<p>The SFU ONT architecture is a completely fiber network that extends fiber all the way into the living unit. Because it is 100% fiber to the living unit, this architecture provides a futureproof network that will deliver the highest level of service and reliability. The SFU ONT architecture is the recommended design solution for all Greenfield MDUs.</p> <p>There are two options in which the SFU ONT can be placed within the LU.</p>
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	The first and preferred option is the placement of the ONT and associated components in a recessed wall cabinet (S-ONE). The second option is to surface mount the ONT and associated components. Both options are depicted in the diagrams below.
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Option 1	Recessed Wall Cabinet (S-ONE):
Verizon Responsibility	<p>Construction Build Out:</p> <ol style="list-style-type: none"> 1. Verizon provides the S-ONE cabinet to the builder/developer. <p>Service Order:</p> <ol style="list-style-type: none"> 2. Verizon will provide, install, test and maintain the ONT, BBU, OPSU, Battery, OPSU cabling, BBU cabling, Video NIM, and BHR equipment at the time of service install. 3. Verizon technicians will make connections for ONT and backup power. 4. Verizon technicians will make connections for CAT 3, CAT 5e, and video Cabling from the S-ONE to the interfaces within the CSWC.
Developer/ Builder Responsibility	<ol style="list-style-type: none"> 1. Install <u>Verizon</u> provided S-ONE (<i>Located Either Vertically or Horizontally to the CSWC</i>). Location should accommodate operating temperature range of –5C to +30C (Motorola). 2. Termination of duct path to the S-ONE. 3. Install <u>Verizon</u> provided 120V 15A Duplex, Surge Protected outlet to S-ONE. 4. Provide a 1 1/2” path between S-ONE and CSWC. 5. Provide bond between S-ONE and CSWC. 6. Ensure that all cabinet installations, wiring and grounding installations adhere to NEC and local wiring guidelines.

SFU ONT Architecture w/S-ONE



Option 2 Surface Mounted SFU ONT:

Service Order:

1. Verizon will provide, install, test and maintain the ONT, BBU, OPSU, Battery, OPSU cabling, BBU cabling, Video NIM, and router equipment at the time of service install.
2. Verizon technicians will make connections for ONT and backup power.
3. Verizon technicians will make connections for CAT 3, CAT 5e, and video cabling from the S-ONE to the CSWC.

Interior wall space for placing the ONT, Power supply (OPSU), Battery Back up (BBU), Auxiliary Battery Pack, BHR, Video NIM, and associated cabling at an agreed location within the living unit:

1. Preferred location in HVAC room, utility closet, or laundry room as 1st choices.
2. Plywood Backboard Installation: 24" W x 24"H x 3/4"D Backboard in accordance with NEC and local code. Bottom of backboard should be located approximately 48" from the floor.
3. Location should accommodate operating temperature range of -20C to +40C.
4. Recommended installation of a CSWC within 18-24" of ONT.

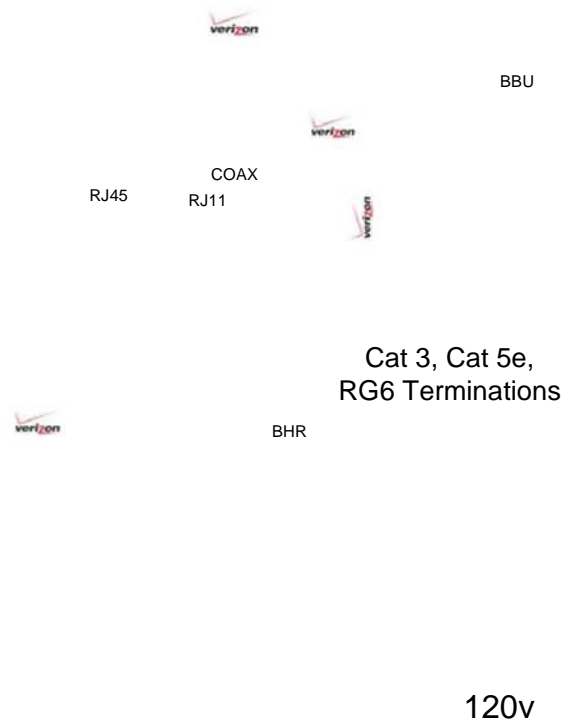
5. Recommended that BBU be placed in close proximity to ONT, but can be located up to 50' from ONT.
6. Recommended that OSPU be located in close proximity to ONT, but can be located up to 100' from ONT.
7. 1 – 120V 15A Min. Duplex, Non-Switched Circuit. The grounded outlet should be located within 8' of the OPSU. Same wall preferred. GFI outlets are acceptable.
8. IW terminating in the CWSC is used to interconnect all voice, data and video services within the apartment/condominium.
9. CSWC size should be adequate for all IW placed and interconnection to ONT
10. Access to approved ground source:

Approved Grounds Sorted in order of Preference

- Power company ground (e.g., Multi-ground Neutral – MGN)
- Structured Steel
- Ground to the MDU branch circuit power wiring grounding conductor using TII-442 Single Grounding Module (Verizon to install)

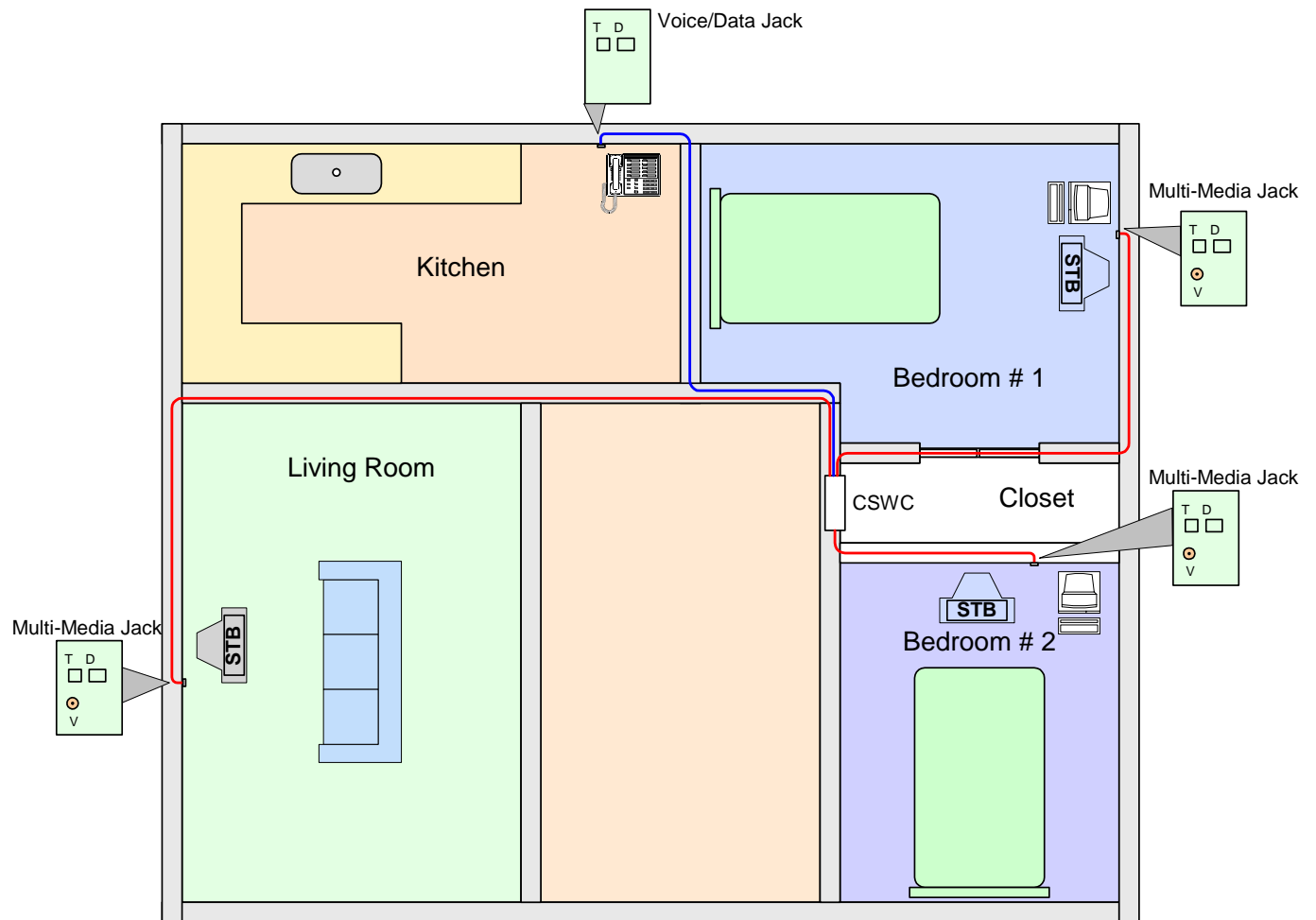
Surface Mount Option

Illustration is representative only and is subject to change.



5.0 Living Unit Wiring:





<p>Developer/ Builder Responsibility</p>	<p>The Developer/Builder is responsible for the following in each LU:</p> <ol style="list-style-type: none"> 1. Installation of all LU cabling such as CAT 5e (Internet), CAT 3 (minimum) (Telephone), and coax wiring (Video) along with associated jacks in the interior of the LU. 2. Connecting all LU cabling (Voice, Internet, & Video) at the CSWC and outlet locations 3. Inside Wire (IW) <ol style="list-style-type: none"> a. All Inside Wire (IW) placed in the residence should be “home-run” back to the CSWC where they are terminated, tested and tagged per wall plate/jack location. b. Builder/occupant is responsible for placement, operation and testing of all IW c. <u>Voice IW</u>: CAT 5e UTP wire is suggested for all Voice services. d. <u>Data IW</u>: A separate CAT 5e UTP wire, from the CAT 5e POTS IW, is required for all broadband services. Distance from the wall plate/jack to the ONT/router should not exceed 300’. Wiring should be compliant with TIA/EIA 568B.1 standards. e. <u>Video IW</u>: A separate RG6 Coax cable (Tri-Shield, 77% Braid, capable of 1.3 GHz transmission) should be placed for each TV location. Cable should be run back to a bi-directional splitter (e.g. 1 x 4, 1.3 GHz capable) at the CSWC. Coax cable between the wall plate and the CSWC should not exceed 100’. 4. Jacks: <ol style="list-style-type: none"> a. <u>Multi-Media (MM) jack</u>: Verizon recommends a minimum of four (4) MM jacks that include an F-connector for video, RJ45 jack for data services, and a RJ11 jack for voice services. b. <u>Voice/Data jack</u>: Verizon recommends a minimum of two (2) RJ45 jack for data services and (1) RJ11 jack for voice services. <p>Note: CAT 5e can replace CAT 3. However, Developer/Builder must not use one CAT 5e wire for both Internet and voice because it changes the impedance of the wire. Additionally, the ringing voltage can interfere with the data causing service interruption.</p>
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Living Unit Wiring Example

6.0 MDU FTTP Product Specifications:


Passive Product Specifications

	Product	Dimension		Power Requirement
		Ports	Size	
	Interior Fiber Distribution Terminal	6	7"H x 12"W x 3"D	N/A
		12	8"H x 14"W x 5"D	
		24	18.5"H x 13"W x 5"D	
		48	32"H x 13"W x 5"D	
	Interior Fiber Distribution Hub	72/144	32"H x 21"W x 12"D	N/A
		216	36"H x 21"W x 15"D	
		432	72"H x 21"W x 15"D	
	Exterior FDT	6,12,24,48 Port	15"H x 14"W x 6.5"D	N/A
	Microduct Riser & Plenum	12.7MM/10MM Riser/Plenum 8.5MM/6MM Riser/Plenum		N/A



Tellabs SFU 611i ONT Product Specifications

Product	Dimension	Power Requirement
 Single Family ONT in MDU	Tellabs 611i	
	11"H x 11"W x 2"D	
	Weight 3 lbs.	Power From OPSU
	-5° C - + 40° C	

Motorola SFU 6000Mi ONT Product Specifications

 Single Family ONT in MDU	Motorola 6000Mi	
	11"H x 11"W x 2"D	
	Weight 7 Lbs.	Power From OPSU
	-5° C - + 40° C	

Common SFU ONT Product Specifications

	Optical Power Supply	10.5"H x 2.5"W x 1.75"D	120V AC 1 AMP
		Weight 1.5 lbs	
	Battery Back-Up	7.75"H x 9.25"W x 3.25"D	Power From OPSU
		Weight 7 lbs (with Battery)	

CPE Product Specifications



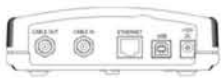
Actiontec BHR
1424WR

4 Port Wireless Router

12.1"L x 5.6"W x 1.9"D

Weight 3.3 lbs.

120V AC
5V DC
3A Peak
10 Watts



Motorola Video
NIM

6"L x 5"W x 1"H

Weight 2 lbs

120V AC
12V DC
MAX 9 Watts

Grounding Product Specifications

Product

Dimension

Power Requirement



TII-442 Signal
Grounding Module

Terminates up to #10 AWG
Aux. 3 Prong AC Outlet
UL 498
Ground Indicator Circuit

N/A

EXHIBIT E

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of

Exclusive Service Contracts for Provision of
Video Services in Multiple Dwelling Units
and Other Real Estate Developments

Further Notice of Proposed Rule Making

MB Docket No. 07-51

**DECLARATION OF HENRY PYE IN SUPPORT OF
COMMENTS OF THE REAL ESTATE ASSOCIATIONS**

I, Henry Pye, declare as follows:

1. I submit this declaration in support of the Comments of the Real Estate Associations in response to the Commission's Further Notice of Proposed Rule Making in the above-captioned matter.
2. I currently serve as Assistant Vice President of Resident Services and Technology for JPI Partners, LLC (JPI). JPI acquires and owns existing multifamily housing properties, constructs new ones, and manages others. JPI is the 29th largest overall apartment manager in the United States according to the National Multi Housing Council's most recent survey data. See "Top 50 Apartment Managers (Rankings)" reported on NMHC's website at:
<http://www.nmhc.org/Top50/SurveyDetail.cfm?SurveyID=13&Sort=Managers>
3. In this position, I am responsible for coordinating the business, legal, and technical aspects of voice, video, and data services, and other low voltage amenities, systems, facilities, and services for JPI's developments, acquisitions, and third party communities. This

includes soliciting proposals from providers to deploy voice, video and data services to existing buildings and new properties, negotiating the terms of the service and related agreements, and monitoring the performance of the providers serving JPI's properties.

4. JPI, either directly or through its affiliates and subsidiaries, currently owns and/or or manages more than 140 apartment communities with approximately 40,000 dwelling units located in 20 states. At many properties, JPI has either entered or assumed a marketing agreement pursuant to which JPI provides some form of marketing support on behalf of a video service provider serving the property. Many such marketing agreements at JPI's existing properties are exclusive marketing agreements under which JPI markets only that provider's video services and is restricted from marketing other providers' video services at the property.

5. In my experience, JPI's exclusive marketing agreements with incumbent video providers have **not** been a barrier to the planned deployment of competitive video services at JPI's properties. The more important factors considered by competitors are the revenue prospects of the building, and the costs of installing or upgrading infrastructure in the building.

Exclusive Marketing Agreements and Infrastructure Cost Allocation

6. Whether we are looking at the construction of a new building, the upgrade of infrastructure in an existing building, or the introduction of a competitive service in an existing building, one of the most important considerations, if not the most important consideration for the property owner and the provider is the cost of construction.

7. Competition has made both the existing video providers and their potential competitors more cost conscious with the result that they have increasingly tried to push the construction costs of MDU infrastructure on to the property owners. Exclusive marketing

agreements are one of the few mechanisms available to the property owner to control these costs -- they specify in detail which aspects of the infrastructure will be the responsibility of the owner and the provider, and they allow the owner to recoup some of its costs from the provider in exchange for providing marketing services. Banning exclusive marketing agreements will hinder the roll out of new and better services and competition in MDU buildings.

JPI's Experience with Cost Sharing Arrangements

8. When JPI constructs a new building, it prepares a detailed analysis of the costs of wiring the building for communications services. The costs vary depending on the style of the building and the technical requirements of the company that has agreed to provide services to the building. Attached as Exhibit 1 hereto is a chart that compares the typical communications infrastructure costs JPI will incur to wire a new building for triple play competition between a cable company and a telephone company, and the typical reimbursements it will receive from the providers from exclusive marketing agreements. The chart compares two types of buildings – garden style and high-rise. The chart also compares two telephone companies – Verizon and AT&T – since there are significantly different infrastructure costs associated with their different video service delivery technologies.

9. As the chart reveals, under no scenario does JPI fully recover its per unit communications infrastructure costs, even assuming it collects reimbursements and 10 years of (present or discounted value) income from the providers. The net costs borne by JPI vary from \$300 to \$610 per unit.

10. If the Commission were to ban exclusive marketing agreements, that would further hinder property owners' ability to recoup any of these costs from providers. It may well

lead JPI and other property owners to scale back their communications infrastructure commitments in new construction to support only one provider rather than two. Obviously, that would decrease the likelihood of competitive offerings in the buildings.

11. With existing buildings, the situation is simply impossible to generalize. Every site is unique, and has unique requirements to upgrade existing wiring or introduce a competitive provider. Therefore, the costs will differ from site to site, provider to provider, and technology to technology. In addition, operating communities typically have little or no capital available for any large scale upgrades. Therefore, they are more dependent on the provider to finance the upgrade or competitive overbuild.

12. In our experience, the cable providers are reluctant to upgrade any property without an exclusive marketing commitment from the property owner. This reluctance has grown of late as cable companies are apparently rethinking their capital cost commitments in light of the potential for increased competition from the telephone companies. The reason for this concern about spending money on wiring in the face of competition is that the cable company ends up paying for wiring that could be made available to a competitor.

13. In our experience, the telephone companies make promises to cover the costs of overlay/retrofits, but the property owner soon comes to realize that the telephone company only means to cover the costs of the initial pathway creation – that is, getting the fiber outside or just inside the unit. The property owner and residents are expected to provide, at their cost, the balance of the wiring, space and electrical requirements for the service.

14. In short, communications infrastructure costs are increasing as new technologies are being introduced, and at the same time, the property owners are being pressured to bear a greater share of these costs. In general, property owners would prefer to have two competitors

for all services in their buildings despite the cost. However, banning the use of exclusive marketing agreements would likely make the cost of accommodating two providers too high and hinder the introduction of advanced services and competitive alternatives in our properties.

Bulk Billing Arrangements

15. In our experience, in some verticals (i.e., market segments) and sub-markets, residents like the convenience of having a move-in ready unit, where they do not have to make arrangements for video service installation, and pay for this service separately. They simply plug their equipment into the wall and they have service. In those cases, we enter into bulk billed video service arrangements to offer this amenity to attract and retain residents.

16. In a typical bulk agreement, JPI pays the provider a flat rate for every unit in the building. The residents then receive service at a prescribed level without additional charge. The channel line-up covered by the bulk service is normally the provider's expanded basic tier or its equivalent, but the line-up may be tailored to the building. Residents may individually order premium services and packages from the provider at their cost.

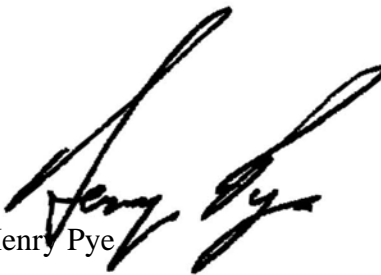
17. In addition to the convenience of having the video service instantly ready when the resident moves in, the resident also benefits from discount that he or she would not be able to negotiate as an individual subscriber. That is because under a bulk agreement, JPI ensures that every unit on a property has access to cable service at a significant discount from the price charged single family residents in the same community. Typically, the discount is very large: in the range of 40-60%.

18. Thus, even though bulk billing arrangements may not be common in the industry as a whole, there are pockets of residents who value this amenity, and receive significant cost

benefits and convenience from it. I can think of no valid reason for prohibiting property owners from continuing to offer this amenity to residents where there is a market demand for it. Property owners are in the business of attracting and retaining residents, and thus they have no incentive to offer amenities that residents do not want.

19. I declare under penalty of perjury that the facts stated herein are true and correct to the best of my knowledge and belief.

This declaration was executed on the 4th day of February, 2008, at Vancouver, Canada.



Henry Pye

Exhibit 1

AT&T and MSO		Garden Style		High-rise	
MSO 860MHz HFC & TRADITIONAL PHONE	/Unit	250 Units	/Unit	250 Units	
Voice and Video Inside and Home-Run Wiring ^{B1, B3, B4}	\$525	\$131,250	\$525	\$131,250	
MSO and Phone Distribution Conduit/ Garden Style ^{B5}	\$335	\$83,750			
MSO and Phone Distribution Conduit/ High-rise ^{B6, B9}			\$230	\$57,500	
Clubhouse	\$30	\$7,500	\$30	\$7,500	
Electric for CSWC ^{B8}	\$50	\$12,500	\$50	\$12,500	
Miscellaneous Electric and Grounding	\$15	\$3,750	\$15	\$3,750	
Total	\$955	\$238,750	\$850	\$212,500	
Estimated Reimbursements and 10 year PV Income	\$550	\$137,500	\$550	\$137,500	
Estimated Net Cost	\$405	\$101,250	\$300	\$75,000	

Verizon FiOS and MSO		Garden Style		High-rise	
MSO 860MHz HFC & VERIZON FiOS SFU ONT	/Unit	250 Units	/Unit	250 Units	
Voice, (2) Video, and Data Inside and Home-Run Wiring ^{B2, B3, B4}	\$965	\$241,250	\$965	\$241,250	
MSO and FiOS Distribution Conduit/ Garden Style ^{B5}	\$260	\$65,000			
MSO and FiOS Distribution Conduit/ High-rise ^{B6}			\$100	\$25,000	
Clubhouse	\$30	\$7,500	\$30	\$7,500	
Electric for S-One & CSWC ^{B7}	\$90	\$22,500	\$90	\$22,500	
Miscellaneous Electric	\$15	\$3,750	\$15	\$3,750	
Total	\$1,360	\$340,000	\$1,200	\$300,000	
Estimated Reimbursements and 10 year PV Income	\$750	\$187,500	\$750	\$187,500	
Estimated Net Cost	\$610	\$152,500	\$450	\$112,500	

		Garden Style		High-rise	
MSO 860MHz HFC & VERIZON FiOS MDU ONT	/Unit	250 Units	/Unit	250 Units	
Voice, (2) Video, and Data Inside and Home-Run Wiring ^{B2, B3, B4}	\$950	\$237,500	\$950	\$237,500	
MSO and FiOS Distribution Conduit/ Garden Style ^{B5}	\$260	\$65,000			
MSO and FiOS Distribution Conduit/ High-rise ^{B6}			\$100	\$25,000	
Clubhouse	\$30	\$7,500	\$30	\$7,500	
Electric for BCR & CSWC ^{B7}	\$90	\$22,500	\$90	\$22,500	
Miscellaneous	\$15	\$3,750	\$15	\$3,750	
Total	\$1,345	\$336,250	\$1,185	\$296,250	
Estimated Reimbursements and 10 year PV Income	\$750	\$187,500	\$750	\$187,500	
Estimated Net Cost	\$595	\$148,750	\$435	\$108,750	

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Verizon to Boost FiOS TV Rates for New Subscribers

Monthly Price of Primary Video Package to Increase 12%, to \$47.99 After Jan. 20

By Todd Spangler -- Multichannel News, 11/20/2007 12:00:00 PM

Verizon will kick up the price of its primary FiOS TV programming package by 12% for subscribers who sign up after Jan. 20, 2008.

FiOS TV Premier, which includes more than 200 channels, will cost \$47.99 per month for new customers after that date, compared with \$42.99 for customers who signed up this year, according to notices Verizon has begun mailing to subscribers in several states. The price increase will be effective for all markets, Verizon director of media relations Sharon Cohen-Hagar said.

Verizon's price increase signals its "confidence in the strength of their product offering and their ability to gain share even without aggressive discounting," wrote Sanford Bernstein analyst Craig Moffett, in a research note Tuesday.

The rate hike also "suggests that the risk of a price war in the pay TV market is likely lower than investors expect," Moffett added.

The telco a year ago raised the price of the FiOS TV Premiere package, from \$39.95 to \$42.99, for new customers as of Jan. 8, 2007.

In addition to higher rates for new FiOS Premier subscribers next January, subscribers who signed up for the service in 2005 and 2006 will see their rates increased to this year's price level of \$42.99, Cohen-Hagar said. Those who subscribed in 2007 will not see their rates change.

The price increases, Cohen-Hagar noted, are "not across the board for every single service, nor for every single customer."

Among the fees going up are prices for some programming tiers. The La Conexion bundle of 140 Spanish-language channels will be \$37.99, compared with \$32.99 currently. Verizon's movie package of 45 channels, which includes Starz, Showtime, Encore, TMC, Flix and Sundance Channel, will increase from \$12.99 to \$14.99.

Verizon is also adding a new \$79.99 fee for "service repair visits" and "set-top box installation/retrieval," according to the letters to FiOS TV subscribers.

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Dumb Wiring Thwarts Smart Homes

by Broderick Perkins

Many new homes are built with communications wiring that may be inadequate for computer, telecommunications, entertainment, security and other electrical systems.

The Federal Communications Commission, in 2000, last issued communication wiring rules for homes that require all telecommunications wiring in new residences be of the so called "Category 3" or better grade.

Cat 3 is a cable that includes 2 to 4 twisted pairs of copper wire enclosed in a plastic sheath and replaces the old 4-wire telephone cable.

"A few (builders) still build homes that don't even measure up to the basic FCC requirement," said John Cowie with the New York City-based Co Development Association.

"Others barely meet the standard. Consequently, homeowners who want more than the bare minimum often have to rewire at a cost substantially higher than the cost of installing adequate wiring in the first place," he added.

The minimum FCC standard is based on 10-year-old technology and may not be adequate for today's more sophisticated telecommunications networks popular for residential use, says Cowie.

The trade group, including members who manufacture and sell telecommunications cable, say at only slightly additional cost to builders -- homeowners should be or she want to foot the bill -- Category 5e should be the cable of choice.

Cat 5e is phone and data wiring designed for use in a structured network that allows up to four phone lines per location as well as telecommunications networking.

Beyond use of the Cat 5e standard, Cowie offers the following guide to "sn

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telecommunications wiring.

An "Excellent-A" system includes two Category 5e structured wiring ports for telephone and one for data -- teamed with two RG-6 coaxial cable port two-way video signals. RG-6 cable is designed to amplify television signal strength and to transmit high quality digital satellite, cable, and DVD movie images and signals. Two telephone and two data ports should be available locations in virtually every room. A central distribution device (CDD) provides connectivity between rooms and with the outside world to bring in and distribute signals throughout the home. The system is also configured for security, energy management and entertainment systems.

A "Good-B" configuration includes the same set up as an "Excellent" system but only one telephone and data port in each room. Additional wiring has been installed behind walls for future use as needs may arise. Entertainment security and energy-management features may also be present for future use.

The "Average-C" set up includes Cat 5e and RG-6 outlets in two or three key rooms using a CDD but can be limited or inflexible in terms of features beyond computer and telephone networks and in terms of expansion later.

The "Minimum Standard-D" meets FCC requirements in terms of using Cat 5e wiring but is useful primarily for telephone wiring and limited computer networking.

The "Failure-F" level of wiring does not meet minimum FCC standards. The building may use the FCC wiring standard but without a CDD the system is already obsolete.

"One of the biggest reasons for buying a brand new home is to benefit from the latest home technology. There is no reason to accept a new home that does not merit a grade of "B" or better when it comes to communications wiring," says Cowie.

Published: August 22, 2005

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